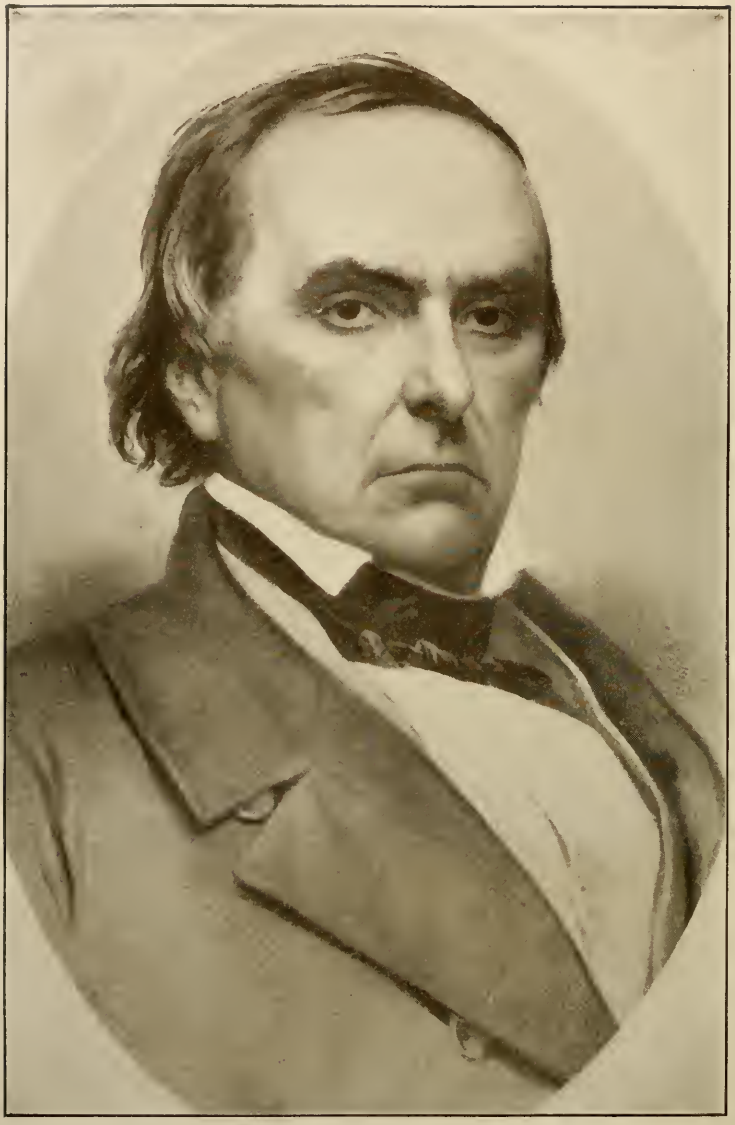

DANIEL WEBSTER

MASTERPIECES OF ELOQUENCE

FAMOUS ORATIONS OF GREAT WORLD LEADERS FROM EARLY GREECE TO THE PRESENT TIME

EDITED BY

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ARCHBISHOP IRELAND

IN TWENTY-FIVE VOLUMES

VOLUME XI

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ORATIONS

WEBSTER

LAYING THE CORNERSTONE OF BUNKER HILL MONUMENT

DELIVERED ON THE SEVENTEENTH OF JUNE, 1825

THIS uncounted multitude before me, and around me, proves the feeling which the occasion has excited. These thousands of human faces, glowing with sympathy and joy, and, from the impulses of a common gratitude, turned reverently to heaven, in this spacious temple of the firmament, proclaim that the day, the place, and the purpose of our assembling have made a deep impression on our hearts.

If, indeed, there be anything in local association fit to affect the mind of man, we need not strive to repress the emotions which agitate us here. We are among the sepulchres of our fathers. We are on ground distinguished by their valor, their constancy, and the shedding of their blood. We are here, not to fix an uncertain date in our annals, nor to draw into notice an obscure and unknown spot. If our humble purpose had never been conceived, if we ourselves had never been born, the seventeenth of June, 1775, would have been a day on which all subsequent history would have poured its light, and the eminence where we stand, a point of attraction to the eyes of successive generations. But we are Americans. We live in what may be called the early age of this great continent; and

we know that our posterity, through all time, are here to suffer and enjoy the allotments of humanity. We see before us a probable train of great events; we know that our own fortunes have been happily cast; and it is natural, therefore, that we should be moved by the contemplation of occurrences which have guided our destiny before many of us were born, and settled the condition in which we should pass that portion of our existence which God allows to men on earth.

We do not read even of the discovery of this continent without feeling something of a personal interest in the event; without being reminded how much it has affected our own fortunes and our own existence. It is more impossible for us, therefore, than for others, to contemplate with unaffected minds that interesting, I may say, that most touching and pathetic scene, when the great discoverer of America stood on the deck of his shattered bark, the shades of night falling on the sea, yet no man sleeping; tossed on the billows of an unknown ocean, yet the stronger billows of alternate hope and despair tossing his own troubled thoughts; extending forward his harassed frame, straining westward his anxious and eager eyes, till Heaven at last granted him a moment of rapture and ecstasy, in blessing his vision with the sight of the unknown world.

Nearer to our times, more closely connected with our fates, and therefore still more interesting to our feelings and affections, is the settlement of our own country by colonists from England. We cherish every memorial of these worthy ancestors; we celebrate their patience and fortitude; we admire their daring enterprise; we teach our children to venerate their piety; and we are justly proud of being descended from men who have set the world an

example of founding civil institutions on the great and united principles of human freedom and human knowledge. To us, their children, the story of their labors and sufferings can never be without its interest. We shall not stand unmoved on the shore of Plymouth, while the sea continues to wash it; nor will our brethren, in another early and ancient colony, forget the place of its first establishment, till their river shall cease to flow by it. No vigor of youth, no maturity of manhood, will lead the nation to forget the spots where its infancy was cradled and defended.

But the great event, in the history of the continent, which we are now met here to commemorate; that prodigy of modern times, at once the wonder and the blessing of the world, is the American Revolution. In a day of extraordinary prosperity and happiness, of high national honor, distinction, and power, we are brought together, in this place, by our love of country, by our admiration of exalted character, by our gratitude for signal services and patriotic devotion.

The society, whose organ I am, was formed for the purpose of rearing some honorable and durable monument to the memory of the early friends of American Independence. They have thought that for this object no time could be more propitious than the present prosperous and peaceful period; that no place could claim preference over this memorable spot; and that no day could be more auspicious to the undertaking than the anniversary of the battle which was here fought. The foundation of that monument we have now laid. With solemnities suited to the occasion, with prayers to Almighty God for his blessing, and in the midst of this cloud of witnesses, we have begun the work. We trust it will be prosecuted, and that springing from a

broad foundation rising high in massive solidity and unadorned grandeur it may remain as long as Heaven permits the works of man to last, a fit emblem, both of the events in memory of which it is raised and of the gratitude of those who have reared it.

We know, indeed, that the record of illustrious actions is most safely deposited in the universal remembrance of mankind. We know that if we could cause this structure to ascend, not only till it reached the skies, but till it pierced them, its broad surfaces could still contain but part of that which, in an age of knowledge, hath already been spread over the earth, and which history charges itself with making known to all future times. We know that no inscription on entablatures less broad than the earth itself can carry information of the events we commemorate where it has not already gone; and that no structure which shall not outlive the duration of letters and knowledge among men, can prolong the memorial. But our object is by this edifice to show our own deep sense of the value and importance of the achievements of our ancestors; and by presenting this work of gratitude to the eye to keep alive similar sentiments and to foster a constant regard for the principles of the Revolution. Human beings are composed not of reason only, but of imagination also, and sentiment; and that is neither wasted nor misapplied which is appropriated to the purpose of giving right direction to sentiments and opening proper springs of feeling in the heart. Let it not be supposed that our object is to perpetuate national hostility, or even to cherish a mere military spirit. It is higher, purer, nobler. We consecrate our work to the spirit of national independence, and we wish that the light of peace may rest upon it forever. We rear a memorial of our conviction of that unmeasured ben

efit which has been conferred on our own land, and of the happy influences which have been produced by the same events on the general interests of mankind. We come as Americans to mark a spot which must forever be dear to us and our posterity. We wish that whosoever, in all coming time, shall turn his eye hither, may behold that the place is not undistinguished where the first great battle of the Revolution was fought. We wish that this structure may proclaim the magnitude and importance of that event to every class and every age. We wish that infancy may learn the purpose of its erection from maternal lips and that weary and withered age may behold it and be solaced by the recollections which it suggests. We wish that labor may look up here and be proud in the midst of its toil. We wish that in those days of disaster which, as they come on all nations, must be expected to come on us also, desponding patriotism may turn its eyes hitherward and be assured that the foundations of our national power still stand strong. We wish that this column rising toward heaven among the pointed spires of so many temples dedicated to God may contribute also to produce in all minds a pious feeling of dependence and gratitude. We wish, finally, that the last object on the sight of him who leaves his native shore, and the first to gladden his who revisits it, may be something which shall remind him of the liberty and the glory of his country. Let it rise till it meet the sun in his coming; let the earlier light of the morning gild it, and parting day linger and play on its summit.

We live in a most extraordinary age. Events so various and so important that they might crowd and distinguish centuries are in our times compressed within the compass of a single life. When has it happened that history has

had so much to record in the same term of years as since the seventeenth of June, 1775? Our own Revolution, which under other circumstances might itself have been expected to occasion a war of half a century, has been achieved; twenty-four sovereign and independent States erected; and a general government established over them, so safe, so wise, so free, so practical, that we might well wonder its establishment should have been accomplished so soon were it not for the greater wonder that it should have been established at all. Two or three millions of people have been augmented to twelve; and the great forests of the West prostrated beneath the arm of successful industry; and the dwellers on the banks of the Ohio and the Mississippi become the fellow-citizens and neighbors of those who cultivate the hills of New England. We have a commerce that leaves no sea unexplored; navies which take no law from superior force; revenues adequate to all the exigencies of government, almost without taxation; and peace with all nations, founded on equal rights and mutual respect.

Europe, within the same period, has been agitated by a mighty revolution, which, while it has been felt in the individual condition and happiness of almost every man, has shaken to the centre her political fabric, and dashed against one another thrones which had stood tranquil for ages. On this, our continent, our own example has been followed; and colonies have sprung up to be nations. Unaccustomed sounds of liberty and free government have reached us from beyond the track of the sun; and at this moment the dominion of European power in this continent, from the place where we stand to the South Pole, is annihilated forever.

In the meantime, both in Europe and America, such has

been the general progress of knowledge; such the improvements in legislation, in commerce, in the arts, in letters, and, above all, in liberal ideas and the general spirit of the age, that the whole world seems changed.

Yet, notwithstanding that this is but a faint abstract of the things which have happened since the day of the battle of Bunker Hill, we are but fifty years removed from it; and we now stand here to enjoy all the blessings of our own condition, and to look abroad on the brightened prospects of the world, while we hold still among us some of those who were active agents in the scenes of 1775, and who are now here from every quarter of New England to visit once more, and under circumstances so affecting, I had almost said so overwhelming, this renowned theatre of their courage and patriotism.

Venerable men, you have come down to us from a former generation. Heaven has bounteously lengthened out your lives that you might behold this joyous day. You are now where you stood fifty years ago this very hour, with your brothers and your neighbors, shoulder to shoulder, in the strife for your country. Behold, how altered! The same heavens are, indeed, over your heads; the same ocean rolls at your feet; but all else, how changed! You hear now no roar of hostile cannon, you see no mixed volumes of smoke and flame rising from burning Charlestown. The ground strewed with the dead and the dying; the impetuous charge; the steady and successful repulse; the loud call to repeated assault; the summoning of all that is manly to repeated resistance; a thousand bosoms freely and fearlessly bared in an instant to whatever of terror there may be in war and death; all these you have witnessed, but you witness them no more. All is peace. The heights of yonder metropolis,

its towers and roofs which you then saw filled with wives and children and countrymen in distress and terror, and looking with unutterable emotions for the issue of the combat, have presented you to-day with the sight of its whole happy population come out to welcome and greet you with a universal jubilee. Yonder proud ships by a felicity of position appropriately lying at the foot of this mount, and seeming fondly to cling around it, are not means of annoyance to you, but your country's own means of distinction and defence. All is peace; and God has granted you this sight of your country's happiness ere you slumber in the grave forever. He has allowed you to behold and to partake the reward of your patriotic toils; and he has allowed us, your sons and countrymen, to meet you here, and in the name of the present generation, in the name of your country, in the name of liberty, to thank you!

But, alas! you are not all here! Time and the sword have thinned your ranks. Prescott, Putnam, Stark, Brooks, Read, Pomeroy, Bridge! our eyes seek for you in vain amid this broken band. You are gathered to your fathers, and live only to your country in her grateful remembrance and your own bright example. But let us not too much grieve that you have met the common fate of men. You lived at least long enough to know that your work had been nobly and successfully accomplished. You lived to see your country's independence established and to sheathe your swords from war. On the light of Liberty you saw arise the light of Peace, like

> "Another morn,
> Risen on mid-noon,"

and the sky on which you closed your eyes was cloudless.

But—ah!—Him! the first great martyr in this great

cause! Him! the premature victim of his own self-devoting heart! Him! the head of our civil councils and the destined leader of our military bands, whom nothing brought hither but the unquenchable fire of his own spirit; him! cut off by Providence in the hour of overwhelming anxiety and thick gloom; falling ere he saw the star of his country rise; pouring out his generous blood like water before he knew whether it would fertilize a land of freedom or of bondage! how shall I struggle with the emotions that stifle the utterance of thy name! Our poor work may perish, but thine shall endure! This monument may moulder away; the solid ground it rests upon may sink down to a level with the sea, but thy memory shall not fail! Wheresoever among men a heart shall be found that beats to the transports of patriotism and liberty, its aspirations shall be to claim kindred with thy spirit!

But the scene amid which we stand does not permit us to confine our thoughts or our sympathies to those fearless spirits who hazarded or lost their lives on this consecrated spot. We have the happiness to rejoice here in the presence of a most worthy representation of the survivors of the whole Revolutionary army.

Veterans, you are the remnant of many a well-fought field. You bring with you marks of honor from Trenton and Monmouth, from Yorktown, Camden, Bennington, and Saratoga. Veterans of half a century, when in your youthful days you put everything at hazard in your country's cause, good as that cause was, and sanguine as youth is, still your fondest hopes did not stretch onward to an hour like this! At a period to which you could not reasonably have expected to arrive; at a moment of national prosperity, such as you could never have foreseen, you are now met

here to enjoy the fellowship of old soldiers and to receive the overflowings of a universal gratitude.

But your agitated countenances and your heaving breasts inform me that even this is not an unmixed joy. I perceive that a tumult of contending feelings rushes upon you. The images of the dead, as well as the persons of the living, throng to your embraces. The scene overwhelms you, and I turn from it. May the Father of all mercies smile upon your declining years and bless them! And when you shall here have exchanged your embraces; when you shall once more have pressed the hands which have been so often extended to give succor in adversity, or grasped in the exultation of victory; then look abroad into this lovely land, which your young valor defended, and mark the happiness with which it is filled; yea, look abroad into the whole earth and see what a name you have contributed to give to your country, and what a praise you have added to freedom, and then rejoice in the sympathy and gratitude which beam upon your last days from the improved condition of mankind.

The occasion does not require of me any particular account of the battle of the seventeenth of June, nor any detailed narrative of the events which immediately preceded it. These are familiarly known to all. In the progress of the great and interesting controversy, Massachusetts and the town of Boston had become early and marked objects of the displeasure of the British Parliament. This had been manifested in the act for altering the government of the Province, and in that for shutting up the port of Boston. Nothing sheds more honor on our early history, and nothing better shows how little the feelings and sentiments of the Colonies were known or regarded in England,

than the impression which these measures everywhere produced in America. It had been anticipated that while the other Colonies would be terrified by the severity of the punishment inflicted on Massachusetts, the other seaports would be governed by a more spirit of gain; and that, as Boston was now cut off from all commerce, the unexpected advantage which this blow on her was calculated to confer on other towns would be greedily enjoyed. How miserably such reasoners deceived themselves! How little they knew of the depth, and the strength, and the intenseness of that feeling of resistance to illegal acts of power which possessed the whole American people! Everywhere the unworthy boon was rejected with scorn. The fortunate occasion was seized everywhere to show to the whole world that the Colonies were swayed by no local interest, no partial interest, no selfish interest. The temptation to profit by the punishment of Boston was strongest to our neighbors of Salem. Yet Salem was precisely the place where this miserable proffer was spurned in a tone of the most lofty self-respect and the most indignant patriotism. "We are deeply affected," said its inhabitants, "with the sense of our public calamities; but the miseries that are now rapidly hastening on our brethren in the capital of the Province greatly excite our commiseration. By shutting up the port of Boston some imagine that the course of trade might be turned hither, and to our benefit; but we must be dead to every idea of justice, lost to all feelings of humanity, could we indulge a thought to seize on wealth and raise our fortunes on the ruin of our suffering neighbors." These noble sentiments were not confined to our immediate vicinity. In that day of general affection and brotherhood, the blow given to Boston smote on every patriotic heart, from one

end of the country to the other. Virginia and the Carolinas, as well as Connecticut and New Hampshire, felt and proclaimed the cause to be their own. The Continental Congress, then holding its first session in Philadelphia, expressed its sympathy for the suffering inhabitants of Boston, and addresses were received from all quarters assuring them that the cause was a common one, and should be met by common efforts and common sacrifices. The Congress of Massachusetts responded to these assurances; and in an address to the Congress at Philadelphia, bearing the official signature, perhaps among the last of the immortal Warren, notwithstanding the severity of its suffering and the magnitude of the dangers which threatened it, it was declared that this Colony "is ready, at all times, to spend and to be spent in the cause of America."

But the hour drew nigh which was to put professions to the proof and to determine whether the authors of these mutual pledges were ready to seal them in blood. The tidings of Lexington and Concord had no sooner spread than it was universally felt that the time was at last come for action. A spirit pervaded all ranks, not transient, not boisterous, but deep, solemn, determined—

"Totamque infusa per artus
Mens agitat molem, et magno se corpore miscet."

War, on their own soil and at their own doors, was, indeed, a strange work to the yeomanry of New England; but their consciences were convinced of its necessity, their country called them to it and they did not withhold themselves from the perilous trial. The ordinary occupations of life were abandoned; the plow was stayed in the unfinished furrow; wives gave up their husbands, and mothers gave up their sons to the battles of a civil war. Death might come, in

honor, on the field; it might come, in disgrace, on the scaffold. For either and for both they were prepared. The sentiment of Quincy was full in their hearts. "Blandishments," said that distinguished son of genius and patriotism, "will not fascinate us, nor will threats of a halter intimidate; for, under God, we are determined that wheresoever, whensoever, or howsoever we shall be called to make our exit, we will die free men."

The seventeenth of June saw the four New England Colonies standing here, side by side, to triumph or to fall together; and there was with them from that moment to the end of the war, what I hope will remain with them forever—one cause, one country, one heart.

The battle of Bunker Hill was attended with the most important effects beyond its immediate result as a military engagement. It created at once a state of open, public war. There could now be no longer a question of proceeding against individuals as guilty of treason or rebellion. That fearful crisis was past. The appeal now lay to the sword, and the only question was whether the spirit and the resources of the people would hold out till the object should be accomplished. Nor were its general consequences confined to our own country. The previous proceedings of the Colonies, their appeals, resolutions, and addresses had made their cause known to Europe. Without boasting, we may say that in no age or country has the public cause been maintained with more force of argument, more power of illustration, or more of that persuasion which excited feeling and elevated principle can alone bestow, than the Revolutionary State papers exhibit. These papers will forever deserve to be studied, not only for the spirit which they breathe, but for the ability with which they were written.

To this able vindication of their cause, the Colonies had now added a practical and severe proof of their own true devotion to it, and evidence also of the power which they could bring to its support. All now saw that if America fell, she would not fall without a struggle. Men felt sympathy and regard as well as surprise when they beheld these infant States, remote, unknown, unaided, encounter the power of England, and in the first considerable battle leave more of their enemies dead on the field, in proportion to the number of combatants, than they had recently known in the wars of Europe.

Information of these events circulating through Europe at length reached the ears of one who now hears me. He has not forgotten the emotion which the fame of Bunker Hill and the name of Warren excited in his youthful breast.

Sir, we are assembled to commemorate the establishment of great public principles of liberty, and to do honor to the distinguished dead. The occasion is too severe for eulogy to the living. But, sir, your interesting relation to this country, the peculiar circumstances which surround you and surround us, call on me to express the happiness which we derive from your presence and aid in this solemn commemoration.

Fortunate, fortunate man! with what measure of devotion will you not thank God for the circumstances of your extraordinary life! You are connected with both hemispheres and with two generations. Heaven saw fit to ordain that the electric spark of liberty should be conducted, through you, from the New World to the Old; and we, who are now here to perform this duty of patriotism, have all of us long ago received it in charge from our fathers to cherish your name and your virtues. You will

account it an instance of your good fortune, sir, that you crossed the seas to visit us at a time which enables you to be present at this solemnity. You now behold the field, the renown of which reached you in the heart of France, and caused a thrill in your ardent bosom. You see the lines of the little redoubt thrown up by the incredible diligence of Prescott; defended to the last extremity, by his lion-hearted valor; and within which the cornerstone of our monument has now taken its position. You see where Warren fell, and where Parker, Gardner, McCleary, Moore, and other early patriots fell with him. Those who survived that day, and whose lives have been prolonged to the present hour, are now around you. Some of them you have known in the trying scenes of the war. Behold! they now stretch forth their feeble arms to embrace you. Behold! they raise their trembling voices to invoke the blessing of God on you and yours forever.

Sir, you have assisted us in laying the foundation of this edifice. You have heard us rehearse, with our feeble commendation, the names of departed patriots. Sir, monuments and eulogy belong to the dead. We give them this day to Warren and his associates. On other occasions they have been given to your more immediate companions in arms, to Washington, to Greene, to Gates, Sullivan, and Lincoln. Sir, we have become reluctant to grant these, our highest and last honors, further. We would gladly hold them yet back from the little remnant of that immortal band. "*Serus in cœlum redeas.*" Illustrious as are your merits, yet far, oh, very far distant be the day when any inscription shall bear your name, or any tongue pronounce its eulogy!

The leading reflection to which this occasion seems to

invite us respects the great changes which have happened in the fifty years since the battle of Bunker Hill was fought. And it peculiarly marks the character of the present age that, in looking at these changes and in estimating their effect on our condition, we are obliged to consider, not what has been done in our own country only, but in others also. In these interesting times, while nations are making separate and individual advances in improvement, they make, too, a common progress; like vessels on a common tide, propelled by the gales at different rates, according to their several structure and management, but all moved forward by one mighty current beneath, strong enough to bear onward whatever does not sink beneath it.

A chief distinction of the present day is a community of opinions and knowledge among men, in different nations, existing in a degree heretofore unknown. Knowledge has, in our time, triumphed, and is triumphing over distance, over difference of languages, over diversity of habits, over prejudice, and over bigotry. The civilized and Christian world is fast learning the great lesson, that difference of nation does not imply necessary hostility, and that all contact need not be war. The whole world is becoming a common field for intellect to act in. Energy of mind, genius, power, wheresoever it exists, may speak out in any tongue, and the world will hear it. A great chord of sentiment and feeling runs through two continents, and vibrates over both. Every breeze wafts intelligence from country to country; every wave rolls it; all give it forth, and all in turn receive it. There is a vast commerce of ideas; there are marts and exchanges for intellectual discoveries, and a wonderful fellowship of those individual intelligences which make up the mind and opinion of the age. Mind is

the great lever of all things; human thought is the process by which human ends are ultimately answered; and the diffusion of knowledge, so astonishing in the last half century, has rendered innumerable minds, variously gifted by nature, competent to be competitors, or fellow-workers, on the theatre of intellectual operation.

From these causes, important improvements have taken place in the personal condition of individuals. Generally speaking, mankind are not only better fed and better clothed, but they are able also to enjoy more leisure; they possess more refinement and more self-respect. A superior tone of education, manners, and habits prevails. This remark, most true in its application to our own country, is also partly true when applied elsewhere. It is proved by the vastly augmented consumption of those articles of manufacture and of commerce which contribute to the comforts and the decencies of life—an augmentation which has far outrun the progress of population. And while the unexampled and almost incredible use of machinery would seem to supply the place of labor, labor still finds its occupation and its reward; so wisely has Providence adjusted men's wants and desires to their condition and their capacity.

Any adequate survey, however, of the progress made in the last half century, in the polite and the mechanic arts, in machinery and manufactures, in commerce and agriculture, in letters and in science, would require volumes. I must abstain wholly from these subjects, and turn, for a moment, to the contemplation of what has been done on the great question of politics and government. This is the master topic of the age; and during the whole fifty years, it has intensely occupied the thoughts

of men. The nature of civil government, its ends and uses, have been canvassed and investigated; ancient opinions attacked and defended; new ideas recommended and resisted by whatever power the mind of man could bring to the controversy. From the closet and the public halls the debate has been transferred to the field; and the world has been shaken by wars of unexampled magnitude, and the greatest variety of fortune. A day of peace has at length succeeded; and now that the strife has subsided, and the smoke cleared away, we may begin to see what has actually been done, permanently changing the state and condition of human society. And without dwelling on particular circumstances, it is most apparent that, from the before-mentioned causes of augmented knowledge and improved individual condition, a real, substantial, and important change has taken place, and is taking place, greatly beneficial, on the whole, to human liberty and human happiness.

The great wheel of political revolution began to move in America. Here its rotation was guarded, regular, and safe. Transferred to the other continent, from unfortunate but natural causes, it received an irregular and violent impulse; it whirled along with a fearful celerity, till at length, like the chariot wheels in the races of antiquity, it took fire from the rapidity of its own motion, and blazed onward, spreading conflagration and terror around.

We learn from the result of this experiment how fortunate was our own condition, and how admirably the character of our people was calculated for making the great example of popular governments. The possession of power did not turn the heads of the American people, for they had long been in the habit of exercising a great portion of self-control. Although the paramount author-

ity of the parent State existed over them, yet a large field of legislation had always been open to our Colonial assemblies. They were accustomed to representative bodies and the forms of free government; they understood the doctrine of the division of power among different branches and the necessity of checks on each. The character of our countrymen, moreover, was sober, moral, and religious; and there was little in the change to shock their feelings of justice and humanity, or even to disturb an honest prejudice. We had no domestic throne to overturn, no privileged orders to cast down, no violent changes of property to encounter. In the American Revolution, no man sought or wished for more than to defend and enjoy his own. None hoped for plunder or for spoil. Rapacity was unknown to it; the axe was not among the instruments of its accomplishment; and we all know that it could not have lived a single day under any well-founded imputation of possessing a tendency adverse to the Christian religion.

It need not surprise us that, under circumstances less auspicious, political revolutions elsewhere, even when well intended, have terminated differently. It is, indeed, a great achievement, it is the master-work of the world, to establish governments entirely popular, on lasting foundations; nor is it easy, indeed, to introduce the popular principle at all into governments to which it has been altogether a stranger. It cannot be doubted, however, that Europe has come out of the contest, in which she has been so long engaged, with greatly superior knowledge, and, in many respects, a highly improved condition. Whatever benefit has been acquired is likely to be retained, for it consists mainly in the acquisition of more enlightened ideas. And although kingdoms and provinces may be wrested from the hands that hold

them, in the same manner they were obtained; although ordinary and vulgar power may, in human affairs, be lost as it has been won, yet it is the glorious prerogative of the empire of knowledge, that what it gains it never loses. On the contrary, it increases by the multiple of its own power; all its ends become means; all its attainments help to new conquests. Its whole abundant harvest is but so much seed wheat, and nothing has ascertained, and nothing can ascertain, the amount of ultimate product.

Under the influence of this rapidly increasing knowledge, the people have begun, in all forms of government, to think and to reason on affairs of state. Regarding government as an institution for the public good, they demand a knowledge of its operations and a participation in its exercise. A call for the representative system, wherever it is not enjoyed, and where there is already intelligence enough to estimate its value, is perseveringly made. Where men may speak out, they demand it; where the bayonet is at their throats, they pray for it.

When Louis XIV. said: "I am the State," he expressed the essence of the doctrine of unlimited power. By the rules of that system, the people are disconnected from the State; they are its subjects; it is their lord. These ideas, founded in the love of power, and long supported by the excess and the abuse of it, are yielding in our age to other opinions; and the civilized world seems at last to be proceeding to the conviction of that fundamental and manifest truth, that the powers of government are but a trust, and that they cannot be lawfully exercised but for the good of the community. As knowledge is more and more extended, this conviction becomes more and more general. Knowledge, in truth, is the great sun in the firmament. Life and

power are scattered with all its beams. The prayer of the Grecian combatant, when enveloped in unnatural clouds and darkness, is the appropriate political supplication for the people of every country not yet blessed with free institutions:

> "Dispel this cloud, the light of heaven restore;
> Give me to see—and Ajax asks no more."

We may hope that the growing influence of enlightened sentiments will promote the permanent peace of the world. Wars, to maintain family alliances, to uphold or to cast down dynasties, to regulate successions to thrones, which have occupied so much room in the history of modern times, if not less likely to happen at all, will be less likely to become general and involve many nations, as the great principle shall be more and more established, that the interest of the world is peace, and its first great statute, that every nation possesses the power of establishing a government for itself. But public opinion has attained also an influence over governments which do not admit the popular principle into their organization. A necessary respect for the judgment of the world operates, in some measure, as a control over the most unlimited forms of authority. It is owing, perhaps, to this truth, that the interesting struggle of the Greeks has been suffered to go on so long, without a direct interference, either to wrest that country from its present masters, and add it to other powers, or to execute the system of pacification by force, and, with united strength, lay the neck of Christian and civilized Greece at the foot of the barbarian Turk. Let us thank God that we live in an age when something has influence besides the bayonet, and when the sternest authority does not venture to encounter

the scorching power of public reproach. Any attempt of the kind I have mentioned should be met by one universal burst of indignation; the air of the civilized world ought to be made too warm to be comfortably breathed by any who would hazard it.

It is, indeed, a touching reflection, that while, in the fulness of our country's happiness, we rear this monument to her honor, we look for instruction in our undertaking, to a country which is now in fearful contest, not for works of art or memorials of glory, but for her own existence. Let her be assured that she is not forgotten in the world; that her efforts are applauded, and that constant prayers ascend for her success. And let us cherish a confident hope for her final triumph. If the true spark of religious and civil liberty be kindled, it will burn. Human agency cannot extinguish it. Like the earth's central fire, it may be smothered for a time; the ocean may overwhelm it; mountains may press it down; but its inherent and unconquerable force will heave both the ocean and the land, and at some time or another, in some place or another, the volcano will break out and flame up to heaven.

Among the great events of the half-century, we must reckon, certainly, the revolution of South America; and we are not likely to overrate the importance of that revolution, either to the people of the country itself or to the rest of the world. The late Spanish Colonies, now independent States, under circumstances less favorable, doubtless, than attended our own Revolution, have yet successfully commenced their national existence. They have accomplished the great object of establishing their independence; they are known and acknowledged in the world; and, although in regard to their systems of government, their sen-

timents on religious toleration, and their provisions for public instruction, they may have yet much to learn, it must be admitted that they have risen to the condition of settled and established States more rapidly than could have been reasonably anticipated. They already furnish an exhilarating example of the difference between free governments and despotic misrule. Their commerce at this moment creates a new activity in all the great marts of the world. They show themselves able by an exchange of commodities to bear a useful part in the intercourse of nations. A new spirit of enterprise and industry begins to prevail; all the great interests of society receive a salutary impulse; and the progress of information not only testifies to an improved condition, but constitutes itself the highest and most essential improvement.

When the battle of Bunker Hill was fought, the existence of South America was scarcely felt in the civilized world. The thirteen little Colonies of North America habitually called themselves the "Continent." Borne down by Colonial subjugation, monopoly, and bigotry, these vast regions of the South were hardly visible above the horizon. But in our day there hath been, as it were, a new creation. The Southern Hemisphere emerges from the sea. Its lofty mountains begin to lift themselves into the light of heaven; its broad and fertile plains stretch out in beauty to the eye of civilized man and at the mighty being of the voice of political liberty, the waters of darkness retire.

And now let us indulge an honest exultation in the conviction of the benefit which the example of our country has produced and is likely to produce on human freedom and human happiness. And let us endeavor to comprehend in all its magnitude and to feel in all its importance the part

assigned to us in the great drama of human affairs. We are placed at the head of the system of representative and popular governments. Thus far our example shows that such governments are compatible, not only with respectability and power, but with repose, with peace, with security of personal rights, with good laws and a just administration.

We are not propagandists. Wherever other systems are preferred, either as being thought better in themselves or as better suited to existing conditions, we leave the preference to be enjoyed. Our history hitherto proves, however, that the popular form is practicable and that, with wisdom and knowledge, men may govern themselves; and the duty incumbent on us is to preserve the consistency of this cheering example and take care that nothing may weaken its authority with the world. If in our case the representative system ultimately fail, popular governments must be pronounced impossible. No combination of circumstances more favorable to the experiment can ever be expected to occur. The last hopes of mankind, therefore, rest with us; and if it should be proclaimed that our example had become an argument against the experiment, the knell of popular liberty would be sounded throughout the earth.

These are incitements to duty; but they are not suggestions of doubt. Our history and our condition, all that is gone before us and all that surrounds us, authorize the belief that popular governments, though subject to occasional variations, perhaps not always for the better in form, may yet in their general character be as durable and permanent as other systems. We know, indeed, that in our country any other is impossible. The principle of free governments adheres to the American soil. It is bedded in it—immovable as its mountains.

And let the sacred obligations which have devolved on this generation and on us sink deep into our hearts. Those are daily dropping from among us who established our liberty and our government. The great trust now descends to new hands. Let us apply ourselves to that which is presented to us as our appropriate object. We can win no laurels in a war for independence. Earlier and worthier hands have gathered them all. Nor are there places for us by the side of Solon, and Alfred, and other founders of States. Our fathers have filled them. But there remains to us a great duty of defence and preservation; and there is opened to us also a noble pursuit to which the spirit of the times strongly invites us. Our proper business is improvement. Let our age be the age of improvement. In a day of peace let us advance the arts of peace and the works of peace. Let us develop the resources of our land, call forth its powers, build up its institutions, promote all its great interests, and see whether we also, in our day and generation, may not perform something worthy to be remembered. Let us cultivate a true spirit of union and harmony. In pursuing the great objects which our condition points out to us, let us act under a settled conviction, and a habitual feeling that these twenty-four States are one country. Let our conceptions be enlarged to the circle of our duties. Let us extend our ideas over the whole of the vast field in which we are called to act. Let our object be our country, our whole country, and nothing but our country. And by the blessing of God may that country itself become a vast and splendid monument, not of oppression and terror, but of wisdom, of peace, and of liberty, upon which the world may gaze with admiration, forever.

AT PLYMOUTH IN 1820

FROM THE DISCOURSE IN COMMEMORATION OF THE FIRST SETTLEMENT OF NEW ENGLAND, DELIVERED AT PLYMOUTH, DECEMBER 22, 1820

THERE may be, and there often is, indeed, a regard for ancestry, which nourishes only a weak pride; as there is also a care for posterity, which only disguises a habitual avarice, or hides the workings of a low and grovelling vanity. But there is also a moral and philosophical respect for our ancestors, which elevates the character and improves the heart. Next to the sense of religious duty and moral feeling, I hardly know what should bear with stronger obligation on a liberal and enlightened mind than a consciousness of alliance with excellence which is departed; and a consciousness, too, that in its acts and conduct, and even in its sentiments and thoughts, it may be actively operating on the happiness of those who come after it. Poetry is found to have few stronger conceptions, by which it would affect or overwhelm the mind, than those in which it presents the moving and speaking image of the departed dead to the senses of the living. This belongs to poetry, only because it is congenial to our nature. Poetry is, in this respect, but the handmaid of true philosophy and morality; it deals with us as human beings, naturally reverencing those whose visible connection with this state of existence is severed, and who may yet exercise we know not what sympathy with ourselves; and when it carries us forward also, and shows us the long-continued result of all the good we do, in the prosperity of those who follow us,

till it bears us from ourselves, and absorbs us in an intense interest for what shall happen to the generations after us—it speaks only in the language of our nature, and affects us with sentiments which belong to us as human beings.

Standing in this relation to our ancestors and our posterity, we are assembled on this memorable spot, to perform the duties which that relation and the present occasion impose upon us. We have come to this Rock, to record here our homage for our Pilgrim Fathers; our sympathy in their sufferings; our gratitude for their labors; our admiration of their virtues; our veneration for their piety; and our attachment to those principles of civil and religious liberty which they encountered the dangers of the ocean, the storms of heaven, the violence of savages, disease, exile, and famine, to enjoy and establish. And we would leave here also, for the generations which are rising up rapidly to fill our places, some proof that we have endeavored to transmit the greater inheritance unimpaired; that in our estimate of public principles and private virtue, in our veneration of religion and piety, in our devotion to religious and civil liberty, in our regard to whatever advances human knowledge or improves happiness, we are not altogether unworthy of our origin. . . .

The hours of this day are rapidly flying, and this occasion will soon be passed. Neither we nor our children can expect to behold its return. They are in the distant regions of futurity; they exist only in the all-creating power of God, who shall stand here a hundred years hence, to trace, through us, their descent from the Pilgrims, and to survey, as we have now surveyed, the progress of their country during the lapse of a century. We would anticipate their concurrence with us in our sentiments of deep regard for our common ancestors. We would anticipate and partake the

pleasure with which they will then recount the steps of New England's advancement. On the morning of that day, although it will not disturb us in our repose, the voice of acclamation and gratitude, commencing on the Rock of Plymouth, shall be transmitted through millions of the sons of the Pilgrims, till it lose itself in the murmurs of the Pacific seas.

We would leave for the consideration of those who shall then occupy our places some proof that we hold the blessings transmitted from our fathers in just estimation; some proof of our attachment to the cause of good government and of civil and religious liberty; some proof of a sincere and ardent desire to promote everything which may enlarge the understandings and improve the hearts of men. And when, from the long distance of a hundred years, they shall look back upon us, they shall know at least that we possessed affections, which, running backward and warming with gratitude for what our ancestors have done for our happiness, run forward also to our posterity, and meet them with cordial salutation, ere yet they have arrived on the shore of being.

Advance, then, ye future generations! We would hail you, as you rise in your long succession, to fill the places which we now fill, and to taste the blessings of existence where we are now passing, and soon shall have passed, our own human duration. We bid you welcome to this pleasant land of the fathers. We bid you welcome to the healthful skies and the verdant fields of New England. We greet your accession to the great inheritance which we have enjoyed. We welcome you to the blessings of good government and religious liberty. We welcome you to the treasures of science and the delights of learning. We welcome

you to the transcendent sweets of domestic life, to the happiness of kindred, and parents, and children. We welcome you to the immeasurable blessings of rational existence, the immortal hope of Christianity, and the light of everlasting truth!

ADAMS AND JEFFERSON

A DISCOURSE IN COMMEMORATION OF THE LIVES AND SERVICES OF JOHN ADAMS AND THOMAS JEFFERSON, FANEUIL HALL, BOSTON, AUGUST 2, 1826

THIS is an unaccustomed spectacle. For the first time, fellow-citizens, badges of mourning shroud the columns and overhang the arches of this hall. These walls, which were consecrated, so long ago, to the cause of American liberty, which witnessed her infant struggles, and rung with the shouts of her earliest victories, proclaim, now, that distinguished friends and champions of that great cause have fallen. It is right that it should be thus. The tears which flow, and the honors that are paid, when the founders of the Republic die, give hope that the Republic itself may be immortal. It is fit that, by public assembly and solemn observance, by anthem and by eulogy, we commemorate the services of national benefactors, extol their virtues, and render thanks to God for eminent blessings, early given and long continued, through their agency, to our favored country.

Adams and Jefferson are no more; and we are assembled, fellow-citizens, the aged, the middle-aged, and the young, by the spontaneous impulse of all, under the authority of the municipal government, with the presence of the Chief Magistrate of the commonwealth, and others its

official representives, the University, and the learned societies, to bear our part in those manifestations of respect and gratitude which pervade the whole land. Adams and Jefferson are no more. On our fiftieth anniversary, the great day of national jubilee, in the very hour of public rejoicing, in the midst of echoing and re-echoing voices of thanksgiving, while their own names were on all tongues, they took their flight together to the world of spirits.

If it be true that no one can safely be pronounced happy while he lives, if that event which terminates life can alone crown its honors and its glory, what felicity is here! The great epic of their lives, how happily concluded! Poetry itself has hardly terminated illustrious lives, and finished the career of earthly renown, by such a consummation. If we had the power, we could not wish to reverse this dispensation of the Divine Providence. The great objects of life were accomplished, the drama was ready to be closed. It has closed; our patriots have fallen; but so fallen, at such age, with such coincidence, on such a day, that we cannot rationally lament that that end has come, which we knew could not be long deferred.

Neither of these great men, fellow-citizens, could have died, at any time, without leaving an immense void in our American society. They have been so intimately, and for so long a time, blended with the history of the country, and especially so united, in our thoughts and recollections, with the events of the Revolution, that the death of either would have touched the chords of public sympathy. We should have felt that one great link, connecting us with former times, was broken; that we had lost something more, as it were, of the presence of the Revolution itself, and of the act of independence, and were driven on, by another great

remove from the days of our country's early distinction, to meet posterity, and to mix with the future. Like the mariner, whom the currents of the ocean and the winds carry along, till he sees the stars which have directed his course and lighted his pathless way descend, one by one, beneath the rising horizon, we should have felt that the stream of time had borne us onward till another great luminary, whose light had cheered us and whose guidance we had followed, had sunk away from our sight.

But the concurrence of their death on the anniversary of Independence has naturally awakened stronger emotions. Both had been Presidents, both had lived to great age, both were early patriots, and both were distinguished and ever honored by their immediate agency in the act of independence. It cannot but seem striking and extraordinary, that these two should live to see the fiftieth year from the date of that act; that they should complete that year; and that then, on the day which had fast linked forever their own fame with their country's glory, the heavens should open to receive them both at once. As their lives themselves were the gifts of Providence, who is not willing to recognize in their happy termination, as well as in their long continuance, proofs that our country and its benefactors are objects of His care?

Adams and Jefferson, I have said, are no more. As human beings, indeed, they are no more. They are no more, as in 1776, bold and fearless advocates of independence; no more, as at subsequent periods, the head of the government; no more, as we have recently seen them, aged and venerable objects of admiration and regard. They are no more. They are dead. But how little is there of the great and good which can die! To their country they yet

live, and live forever. They live in all that perpetuates the remembrance of men on earth; in the recorded proofs of their own great actions, in the offspring of their intellect, in the deep-engraved lines of public gratitude, and in the respect and homage of mankind. They live in their example; and they live, emphatically, and will live, in the influence which their lives and efforts, their principles and opinions, now exercise, and will continue to exercise, on the affairs of men, not only in their own country, but throughout the civilized world. A superior and commanding human intellect, a truly great man, when Heaven vouchsafes so rare a gift, is not a temporary flame, burning brightly for a while, and then giving place to returning darkness. It is rather a spark of fervent heat, as well as radiant light, with power to enkindle the common mass of human mind; so that when it glimmers in its own decay, and finally goes out in death, no night follows, but it leaves the world all light, all on fire, from the potent contact of its own spirit. Bacon died; but the human understanding, roused by the touch of his miraculous wand to a perception of the true philosophy and the just mode of inquiring after truth, has kept on its course successfully and gloriously. Newton died; yet the courses of the spheres are still known, and they yet move on by the laws which he discovered, and in the orbits which he saw, and described for them, in the infinity of space.

No two men now live, fellow-citizens, perhaps it may be doubted whether any two men have ever lived in one age, who, more than those we now commemorate, have impressed on mankind their own sentiments in regard to politics and government, infused their own opinions more deeply into the opinions of others, or given a more lasting

direction to the current of human thought. Their work doth not perish with them. The tree which they assisted to plant will flourish, although they water it and protect it no longer; for it has struck its roots deep, it has sent them to the very centre; no storm, not of force to burst the orb, can overturn it; its branches spread wide; they stretch their protecting arms broader and broader, and its top is destined to reach the heavens. We are not deceived. There is no delusion here. No age will come in which the American Revolution will appear less than it is, one of the greatest events in human history. No age will come in which it shall cease to be seen and felt, on either continent, that a mighty step, a great advance, not only in American affairs, but in human affairs, was made on the 4th of July, 1776. And no age will come, we trust, so ignorant or so unjust as not to see and acknowledge the efficient agency of those we now honor in producing that momentous event.

We are not assembled, therefore, fellow-citizens, as men overwhelmed with calamity by the sudden disruption of the ties of friendship or affection, or as in despair for the Republic by the untimely blighting of its hopes. Death has not surprised us by an unseasonable blow. We have, indeed, seen the tomb close, but it has closed only over mature years, over long-protracted public service, over the weakness of age, and over life itself only when the ends of living had been fulfilled. These suns, as they rose slowly and steadily, amid clouds and storms, in their ascendant, so they have not rushed from their meridian to sink suddenly in the west. Like the mildness, the serenity, the continuing benignity of a summer's day, they have gone down with slow-descending, grateful, long-lingering light; and now

that they are beyond the visible margin of the world, good omens cheer us from "the bright track of their fiery car"!

There were many points of similarity in the lives and fortunes of these great men. They belonged to the same profession, and had pursued its studies and its practice, for unequal lengths of time indeed, but with diligence and effect. Both were learned and able lawyers. They were natives and inhabitants, respectively, of those two of the Colonies which at the Revolution were the largest and most powerful, and which naturally had a lead in the political affairs of the times. When the Colonies became in some degree united, by the assembling of a general Congress, they were brought to act together in its deliberations, not indeed at the same time, but both at early periods. Each had already manifested his attachment to the cause of the country, as well as his ability to maintain it, by printed addresses, public speeches, extensive correspondence, and whatever other mode could be adopted for the purpose of exposing the encroachments of the British Parliament, and animating the people to a manly resistance. Both were not only decided, but early, friends of Independence. While others yet doubted, they were resolved; where others hesitated, they pressed forward. They were both members of the committee for preparing the Declaration of Independence, and they constituted the sub-committee appointed by the other members to make the draft. They left their seats in Congress, being called to other public employments, at periods not remote from each other, although one of them returned to it afterward for a short time. Neither of them was of the assembly of great men which formed the present Constitution, and neither was at any time a member of Congress under its provisions. Both have been public

ministers abroad, both Vice-Presidents and both Presidents of the United States. These coincidences are now singularly crowned and completed. They have died together; and they died on the anniversary of liberty.

When many of us were last in this place, fellow-citizens, it was on the day of that anniversary. We were met to enjoy the festivities belonging to the occasion, and to manifest our grateful homage to our political fathers. We did not, we could not here, forget our venerable neighbor of Quincy. We knew that we were standing, at a time of high and palmy prosperity, where he had stood in the hour of utmost peril; that we saw nothing but liberty and security, where he had met the frown of power; that we were enjoying everything, where he had hazarded everything; and just and sincere plaudits rose to his name, from the crowds which filled this area, and hung over these galleries. He whose grateful duty it was to speak to us,[1] on that day, of the virtues of our fathers, had, indeed, admonished us that time and years were about to level his venerable frame with the dust. But he bade us hope that "the sound of a nation's joy, rushing from our cities, ringing from our valleys, echoing from our hills, might yet break the silence of his aged ear; that the rising blessings of grateful millions might yet visit with glad light his decaying vision." Alas! that vision was then closing forever. Alas! the silence which was then settling on that aged ear was an everlasting silence! For, lo! in the very moment of our festivities, his freed spirit ascended to God who gave it! Human aid and human solace terminate at the grave; or we would gladly have borne him upward, on a nation's

[1] Hon. Josiah Quincy.

outspread hands; we would have accompanied him, and with the blessings of millions and the prayers of millions, commended him to the Divine favor.

While still indulging our thoughts, on the coincidence of the death of this venerable man with the anniversary of Independence, we learn that Jefferson, too, has fallen; and that these aged patriots, these illustrious fellow-laborers, have left our world together. May not such events raise the suggestion that they are not undesigned, and that Heaven does so order things, as sometimes to attract strongly the attention and excite the thoughts of men? The occurrence has added new interest to our anniversary, and will be remembered in all time to come.

The occasion, fellow-citizens, requires some account of the lives and services of John Adams and Thomas Jefferson. This duty must necessarily be performed with great brevity, and in the discharge of it I shall be obliged to confine myself, principally, to those parts of their history and character which belonged to them as public men.

John Adams was born at Quincy, then part of the ancient town of Braintree, on the 19th day of October (old style), 1735. He was a descendant of the Puritans, his ancestors having early emigrated from England, and settled in Massachusetts. Discovering in childhood a strong love of reading and of knowledge, together with marks of great strength and activity of mind, proper care was taken by his worthy father to provide for his education. He pursued his youthful studies in Braintree, under Mr. Marsh, a teacher whose fortune it was that Josiah Quincy, Jr., as well as the subject of these remarks, should receive from him his instruction in the rudiments of classical literature. Having

been admitted, in 1751, a member of Harvard College, Mr. Adams was graduated, in course, in 1755; and on the catalogue of that institution, his name, at the time of his death, was second among the living Alumni, being preceded only by that of the venerable Holyoke. With what degree of reputation he left the university is not now precisely known. We know only that he was distinguished in a class which numbered Locke and Hemmenway among its members. Choosing the law for his profession, he commenced and prosecuted its studies at Worcester, under the direction of Samuel Putnam, a gentleman whom he has himself described as an acute man, an able and learned lawyer, and as being in large professional practice at that time. In 1758 he was admitted to the bar, and entered upon the practice of the law in Braintree. He is understood to have made his first considerable effort, or to have attained his first signal success, at Plymouth, on one of those occasions which furnish the earliest opportunity for distinction to many young men of the profession, a jury trial, and a criminal cause. His business naturally grew with his reputation, and his residence in the vicinity afforded the opportunity, as his growing eminence gave the power, of entering on a larger field of practice in the capital. In 1766 he removed his residence to Boston, still continuing his attendance on the neighboring circuits, and not infrequently called to remote parts of the Province. In 1770 his professional firmness was brought to a test of some severity, on the application of the British officers and soldiers to undertake their defence, on the trial of the indictments found against them on account of the transactions of the memorable 5th of March. He seems to have thought, on this occasion, that a man can no more abandon

the proper duties of his profession, than he can abandon other duties. The event proved, that, as he judged well for his own reputation, so, too, he judged well for the interest and permanent fame of his country. The result of that trial proved that, notwithstanding the high degree of excitement then existing in consequence of the measures of the British Government, a jury of Massachusetts would not deprive the most reckless enemies, even the officers of that standing army quartered among them, which they so perfectly abhorred, of any part of that protection which the law, in its mildest and most indulgent interpretation, affords to persons accused of crimes.

Without following Mr. Adams' professional course further, suffice it to say, that on the first establishment of the judicial tribunals under the authority of the State, in 1776, he received an offer of the high and responsible station of Chief-Justice of the Supreme Court of Massachusetts. But he was destined for another and a different career. From early life the bent of his mind was toward politics; a propensity which the state of the times, if it did not create, doubtless very much strengthened. Public subjects must have occupied the thoughts and filled up the conversation in the circles in which he then moved; and the interesting questions at that time just arising could not but seize on a mind like his, ardent, sanguine, and patriotic. A letter, fortunately preserved, written by him at Worcester, so early as the 12th of October, 1755, is a proof of very comprehensive views, and uncommon depth of reflection, in a young man not yet quite twenty. In this letter he predicted the transfer of power, and the establishment of a new seat of empire in America; he predicted, also, the increase of population in the Colonies; and antici-

pated their naval distinction, and foretold that all Europe combined could not subdue them. All this is said, not on a public occasion or for effect, but in the style of sober and friendly correspondence, as the result of his own thoughts. "I sometimes retire," said he, at the close of the letter, "and, laying things together, form some reflections pleasing to myself. The produce of one of these reveries you have read above." This prognostication so early in his own life, so early in the history of the country, of independence, of vast increase of numbers, of naval force, of such augmented power as might defy all Europe, is remarkable. It is more remarkable that its author should live to see fulfilled to the letter what could have seemed to others, at the time, but the extravagance of youthful fancy. His earliest political feelings were thus strongly American, and from this ardent attachment to his native soil he never departed.

While still living at Quincy, and at the age of twenty-four, Mr. Adams was present, in this town, at the argument before the Supreme Court respecting Writs of Assistance, and heard the celebrated and patriotic speech of James Otis. Unquestionably, that was a masterly performance. No flighty declamation about liberty, no superficial discussion of popular topics, it was a learned, penetrating, convincing, constitutional argument, expressed in a strain of high and resolute patriotism. He grasped the question then pending between England and her Colonies with the strength of a lion; and if he sometimes sported, it was only because the lion himself is sometimes playful. Its success appears to have been as great as its merits, and its impression was widely felt. Mr. Adams himself seems never to have lost the feeling it produced, and to have entertained constantly the fullest conviction of its important effects. "I

do say," he observes, "in the most solemn manner, that Mr. Otis' Oration against Writs of Assistance breathed into this nation the breath of life."

In 1765 Mr. Adams laid before the public, anonymously, a series of essays, afterward collected in a volume in London, under the title of "A Dissertation on the Canon and Feudal Law." The object of this work was to show that our New England ancestors, in consenting to exile themselves from their native land, were actuated mainly by the desire of delivering themselves from the power of the hierarchy, and from the monarchical and aristocratical systems of the other continent; and to make this truth bear with effect on the politics of the times. Its tone is uncommonly bold and animated for that period. He calls on the people, not only to defend, but to study and understand, their rights and privileges; urges earnestly the necessity of diffusing general knowledge; invokes the clergy and the bar, the colleges and academies, and all others who have the ability and the means to expose the insidious designs of arbitrary power, to resist its approaches, and to be persuaded that there is a settled design on foot to enslave all America. "Be it remembered," says the author, "that liberty must, at all hazards, be supported. We have a right to it, derived from our Maker. But if we had not, our fathers have earned and bought it for us, at the expense of their ease, their estates, their pleasure, and their blood. And liberty cannot be preserved without a general knowledge among the people, who have a right, from the frame of their nature, to knowledge, as their great Creator, who does nothing in vain, has given them understandings and a desire to know. But, besides this, they have a right, an indisputable, inalienable, indefeasible, divine right, to that most dreaded and envied

kind of knowledge, I mean of the characters and conduct of their rulers. Rulers are no more than attorneys, agents, and trustees for the people; and if the cause, the interest and trust, is insidiously betrayed, or wantonly trifled away, the people have a right to revoke the authority that they themselves have deputed, and to constitute abler and better agents, attorneys, and trustees."

The citizens of this town conferred on Mr. Adams his first political distinction, and clothed him with his first political trust, by electing him one of their representatives in 1770. Before this time he had become extensively known throughout the Province, as well by the part he had acted in relation to public affairs, as by the exercise of his professional ability. He was among those who took the deepest interest in the controversy with England, and, whether in or out of the Legislature, his time and talents were alike devoted to the cause. In the years 1773 and 1774 he was chosen a Councillor by the members of the General Court, but rejected by Governor Hutchinson in the former of those years, and by Governor Gage in the latter.

The time was now at hand, however, when the affairs of the Colonies urgently demanded united counsels throughout the country. An open rupture with the parent State appeared inevitable, and it was but the dictate of prudence that those who were united by a common interest and a common danger should protect that interest and guard against that danger by united efforts. A general Congress of Delegates from all the Colonies having been proposed and agreed to, the House of Representatives, on the 17th of June, 1774, elected James Bowdoin, Thomas Cushing, Samuel Adams, John Adams, and Robert Treat Paine, delegates from Massachusetts. This appointment was made

at Salem, where the General Court had been convened by Governor Gage, in the last hour of the existence of a House of Representatives under the Provincial Charter. While engaged in this important business, the Governor, having been informed of what was passing, sent his secretary with a message dissolving the General Court. The secretary, finding the door locked, directed the messenger to go in and inform the Speaker that the secretary was at the door with a message from the Governor. The messenger returned, and informed the secretary that the orders of the House were that the doors should be kept fast; whereupon the secretary soon after read upon the stairs a proclamation dissolving the General Court. Thus terminated, forever, the actual exercise of the political power of England in or over Massachusetts. The four last-named delegates accepted their appointments, and took their seats in Congress the first day of its meeting, the 5th of September, 1774, in Philadelphia.

The proceedings of the first Congress are well known, and have been universally admired. It is in vain that we would look for superior proofs of wisdom, talent, and patriotism. Lord Chatham said that, for himself, he must declare that he had studied and admired the free States of antiquity, the master States of the world, but that for solidity of reasoning, force of sagacity, and wisdom of conclusion, no body of men could stand in preference to this Congress. It is hardly inferior praise to say, that no production of that great man himself can be pronounced superior to several of the papers published as the proceedings of this most able, most firm, most patriotic assembly. There is, indeed, nothing superior to them in the range of political disquisition. They not only embrace, illustrate,

and enforce everything which political philosophy, the love of liberty, and the spirit of free inquiry had antecedently produced, but they add new and striking views of their own, and apply the whole, with irresistible force, in support of the cause which had drawn them together.

Mr. Adams was a constant attendant on the deliberations of this body, and bore an active part in its important measures. He was of the committee to state the rights of the Colonies, and of that also which reported the address to the king.

As it was in the Continental Congress, fellow-citizens, that those whose deaths have given rise to this occasion were first brought together, and called upon to unite their industry and their ability in the service of the country, let us now turn to the other of these distinguished men, and take a brief notice of his life up to the period when he appeared within the walls of Congress.

Thomas Jefferson, descended from ancestors who had been settled in Virginia for some generations, was born near the spot on which he died, in the County of Albemarle, on the 2d of April (old style), 1743. His youthful studies were pursued in the neighborhood of his father's residence until he was removed to the College of William and Mary, the highest honors of which he in due time received. Having left the college with reputation, he applied himself to the study of the law under the tuition of George Wythe, one of the highest judicial names of which that State can boast. At an early age he was elected a member of the Legislature, in which he had no sooner appeared than he distinguished himself by knowledge, capacity, and promptitude.

Mr. Jefferson appears to have been imbued with an early love of letters and science, and to have cherished a strong disposition to pursue these objects. To the physical sciences, especially, and to ancient classic literature, he is understood to have had a warm attachment, and never entirely to have lost sight of them in the midst of the busiest occupations. But the times were times for action, rather than for contemplation. The country was to be defended, and to be saved, before it could be enjoyed. Philosophic leisure and literary pursuits, and even the objects of professional attention, were all necessarily postponed to the urgent calls of the public service. The exigency of the country made the same demand on Mr. Jefferson that it made on others who had the ability and the disposition to serve it; and he obeyed the call; thinking and feeling in this respect with the great Roman orator: "Quis enim est tam cupidus in perspicienda cognoscendaque rerum natura, ut, si ei tractanti contemplantique res cognitione dignissimas subito sit allatum periculum discrimenque patriæ, cui subvenire opitularique possit, non illa omnia relinquat atque abjiciat, etiam si dinumerare se stellas, aut metiri mundi magnitudinem posse arbitretur?"

Entering with all his heart into the cause of liberty, his ability, patriotism, and power with the pen naturally drew upon him a large participation in the most important concerns. Wherever he was, there was found a soul devoted to the cause, power to defend and maintain it, and willingness to incur all its hazards. In 1774 he published a "Summary View of the Rights of British America," a valuable production among those intended to show the dangers which threatened the liberties of the country, and to encourage the people in their defence. In June, 1775, he was elected a

member of the Continental Congress, as successor to Peyton Randolph, who had resigned his place on account of ill health, and took his seat in that body on the 21st of the same month.

And now, fellow citizens, without pursuing the biography of these illustrious men further, for the present, let us turn our attention to the most prominent act of their lives, their participation in the Declaration of Independence.

Preparatory to the introduction of that important measure, a committee, at the head of which was Mr. Adams, had reported a resolution, which Congress adopted on the 10th of May, recommending, in substance, to all the Colonies which had not already established governments suited to the exigencies of their affairs, to adopt such government as would, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general.

This significant vote was soon followed by the direct proposition which Richard Henry Lee had the honor to submit to Congress, by resolution, on the 7th day of June. The published journal does not expressly state it, but there is no doubt, I suppose, that this resolution was in the same words, when originally submitted by Mr. Lee, as when finally passed. Having been discussed on Saturday, the 8th, and Monday, the 10th of June, this resolution was on the last-mentioned day postponed for further consideration to the first day of July; and at the same time it was voted, that a committee be appointed to prepare a Declaration to the effect of the resolution. This committee was elected by ballot, on the following day, and consisted of Thomas Jefferson, John Adams, Benjamin Franklin, Roger Sherman, and Robert R. Livingston.

It is usual, when committees are elected by ballot, that their members should be arranged in order, according to the number of votes which each has received. Mr. Jefferson, therefore, had received the highest, and Mr. Adams the next highest number of votes. The difference is said to have been but of a single vote. Mr. Jefferson and Mr. Adams, standing thus at the head of the committee, were requested by the other members to act as a sub-committee to prepare the draft; and Mr. Jefferson drew up the paper. The original draft, as brought by him from his study, and submitted to the other members of the committee, with interlineations in the handwriting of Dr. Franklin, and others in that of Mr. Adams, was in Mr. Jefferson's possession at the time of his death. The merit of this paper is Mr. Jefferson's. Some changes were made in it at the suggestion of other members of the committee, and others by Congress while it was under discussion. But none of them altered the tone, the frame, the arrangement, or the general character of the instrument. As a composition, the Declaration is Mr. Jefferson's. It is the production of his mind, and the high honor of it belongs to him, clearly and absolutely.

It has sometimes been said, as if it were a derogation from the merits of this paper, that it contains nothing new; that it only states grounds of proceeding, and presses topics of argument, which had often been stated and pressed before. But it was not the object of the Declaration to produce anything new. It was not to invent reasons for independence, but to state those which governed the Congress. For great and sufficient causes, it was proposed to declare independence; and the proper business of the paper to be drawn was to set forth those causes, and justify the authors of the measure, in any event of fortune, to the country and

to posterity. The cause of American Independence, moreover, was now to be presented to the world in such manner, if it might so be, as to engage its sympathy, to command its respect, to attract its admiration; and in an assembly of most able and distinguished men, Thomas Jefferson had the high honor of being the selected advocate of this cause. To say that he performed his great work well, would be doing him injustice. To say that he did excellently well, admirably well, would be inadequate and halting praise. Let us rather say, that he so discharged the duty assigned him, that all Americans may well rejoice that the work of drawing the title-deed of their liberties devolved upon him.

With all its merits, there are those who have thought that there was one thing in the Declaration to be regretted; and that is, the asperity and apparent anger with which it speaks of the person of the king; the industrious ability with which it accumulates and charges upon him all the injuries which the Colonies had suffered from the mother country. Possibly some degree of injustice, now or hereafter, at home or abroad, may be done to the character of Mr. Jefferson, if this part of the Declaration be not placed in its proper light. Anger or resentment, certainly much less personal reproach and invective, could not properly find place in a composition of such high dignity, and of such lofty and permanent character.

A single reflection on the original ground of dispute between England and the Colonies is sufficient to remove any unfavorable impression in this respect.

The inhabitants of all the Colonies, while Colonies, admitted themselves bound by their allegiance to the king, but they disclaimed altogether the authority of Parliament; holding themselves, in this respect, to resemble the condi-

tion of Scotland and Ireland before the respective unions of those kingdoms with England, when they acknowledged allegiance to the same king, but had each its separate Legislature. The tie, therefore, which our Revolution was to break did not subsist between us and the British Parliament, or between us and the British Government in the aggregate, but directly between us and the king himself. The Colonies had never admitted themselves subject to Parliament. That was precisely the point of the original controversy. They had uniformly denied that Parliament had authority to make laws for them. There was, therefore, no subjection to Parliament to be thrown off. But allegiance to the king did exist, and had been uniformly acknowledged; and down to 1775 the most solemn assurances had been given that it was not intended to break that allegiance, or to throw it off. Therefore, as the direct object and only effect of the Declaration, according to the principles on which the controversy had been maintained on our part, were to sever the tie of allegiance which bound us to the king, it was properly and necessarily founded on acts of the crown itself, as its justifying causes. Parliament is not so much as mentioned in the whole instrument. When odious and oppressive acts are referred to, it is done by charging the king with confederating with others "in pretended acts of legislation"; the object being constantly to hold the king himself directly responsible for those measures which were the grounds of separation. Even the precedent of the English Revolution was not overlooked, and in this case, as well as in that, occasion was found to say that the king had *abdicated* the government. Consistency with the principles upon which resistance began, and with all the previous State papers issued by Congress, required that the Declara-

tion should be bottomed on the misgovernment of the king; and therefore it was properly framed with that aim and to that end. The king was known, indeed, to have acted, as in other cases, by his Ministers, and with his Parliament; but as our ancestors had never admitted themselves subject either to Ministers or to Parliament, there were no reasons to be given for now refusing obedience to their authority. This clear and obvious necessity of founding the Declaration on the misconduct of the king himself, gives to that instrument its personal application, and its character of direct and pointed accusation.

The Declaration having been reported to Congress by the committee, the resolution itself was taken up and debated on the first day of July, and again on the second, on which last day it was agreed to and resolved, in these words:

"*Resolved*, That these united Colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved."

Having thus passed the main resolution, Congress proceeded to consider the reported draft of the Declaration. It was discussed on the second, and third, and fourth days of the month, in Committee of the Whole; and on the last of those days, being reported from that committee, it received the final approbation and sanction of Congress. It was ordered, at the same time, that copies be sent to the several States, and that it be proclaimed at the head of the army. The Declaration thus published did not bear the names of the members, for as yet it had not been signed by them. It was authenticated, like other papers of the Congress, by the signatures of the President and Secretary. On

the 19th of July, as appears by the secret journal, Congress "*Resolved*, That the Declaration, passed on the fourth, be fairly engrossed on parchment, with the title and style of 'The unanimous Declaration of the Thirteen United States of America'; and that the same, when engrossed, be signed by every member of Congress." And on the second day of August following, "the Declaration, being engrossed and compared at the table, was signed by the members." So that it happens, fellow-citizens, that we pay these honors to their memory on the anniversary of that day (2d of August) on which these great men actually signed their names to the Declaration. The Declaration was thus made, that is, it passed and was adopted as an act of Congress, on the fourth of July; it was then signed, and certified by the President and Secretary, like other acts. The Fourth of July, therefore, is the anniversary of the Declaration. But the signatures of the members present were made to it, being then engrossed on parchment, on the second day of August. Absent members afterward signed as they came in; and indeed it bears the names of some who were not chosen members of Congress until after the Fourth of July. The interest belonging to the subject will be sufficient, I hope, to justify these details.

The Congress of the Revolution, fellow citizens, sat with closed doors, and no report of its debates was ever made. The discussion, therefore, which accompanied this great measure, has never been preserved, except in memory and by tradition. But it is, I believe, doing no injustice to others to say, that the general opinion was, and uniformly has been, that in debate, on the side of independence, John Adams had no equal. The great author of the Declaration himself has expressed that opinion uniformly and strongly.

"John Adams," said he, in the hearing of him who has now the honor to address you, "John Adams was our colossus on the floor. Not graceful, not elegant, not always fluent, in his public addresses, he yet came out with a power, both of thought and of expression, which moved us from our seats."

For the part which he was here to perform, Mr. Adams doubtless was eminently fitted. He possessed a bold spirit, which disregarded danger, and a sanguine reliance on the goodness of the cause, and the virtues of the people, which led him to overlook all obstacles. His character, too, had been formed in troubled times. He had been rocked in the early storms of the controversy, and had acquired a decision and a hardihood proportioned to the severity of the discipline which he had undergone.

He not only loved the American cause devoutly, but had studied and understood it. It was all familiar to him. He had tried his powers on the questions which it involved, often and in various ways; and had brought to their consideration whatever of argument or illustration the history of his own country, the history of England, or the stores of ancient or of legal learning, could furnish. Every grievance enumerated in the long catalogue of the Declaration had been the subject of his discussion, and the object of his remonstrance and reprobation. From 1760 the Colonies, the rights of the Colonies, the liberties of the Colonies, and the wrongs inflicted on the Colonies, had engaged his constant attention; and it has surprised those who have had the opportunity of witnessing it, with what full remembrance and with what prompt recollection he could refer, in his extreme old age, to every act of Parliament affecting the Colonies, distinguishing and stating their respective titles, sections, and provisions; and to all the Co-

lonial memorials, remonstrances, and petitions, with whatever else belonged to the intimate and exact history of the times from that year to 1775. It was, in his own judgment, between these years that the American people came to a full understanding and thorough knowledge of their rights, and to a fixed resolution of maintaining them; and bearing himself an active part in all important transactions, the controversy with England being then in effect the business of his life, facts, dates, and particulars made an impression which was never effaced. He was prepared, therefore, by education and discipline, as well as by natural talent and natural temperament, for the part which he was now to act.

The eloquence of Mr. Adams resembled his general character, and formed, indeed, a part of it. It was bold, manly, and energetic; and such the crisis required. When public bodies are to be addressed on momentous occasions, when great interests are at stake, and strong passions excited, nothing is valuable in speech further than as it is connected with high intellectual and moral endowments. Clearness, force, and earnestness are the qualities which produce conviction. True eloquence, indeed, does not consist in speech. It cannot be brought from far. Labor and learning may toil for it, but they will toil in vain. Words and phrases may be marshalled in every way, but they cannot compass it. It must exist in the man, in the subject, and in the occasion. Affected passion, intense expression, the pomp of declamation, all may aspire to it; they cannot reach it. It comes, if it come at all, like the outbreaking of a fountain from the earth, or the bursting forth of volcanic fires, with spontaneous, original, native force. The graces taught in the schools, the costly ornaments and studied contrivances of speech, shock and disgust men,

when their own lives, and the fate of their wives, their children, and their country, hang on the decision of the hour. Then words have lost their power, rhetoric is vain, and all elaborate oratory contemptible. Even genius itself then feels rebuked and subdued, as in the presence of higher qualities. Then patriotism is eloquent; then self-devotion is eloquent. The clear conception, outrunning the deductions of logic, the high purpose, the firm resolve, the dauntless spirit, speaking on the tongue, beaming from the eye, informing every feature, and urging the whole man onward, right onward to his object—this, this is eloquence; or rather, it is something greater and higher than all eloquence—it is action, noble, sublime, godlike action.

In July, 1776, the controversy had passed the stage of argument. An appeal had been made to force, and opposing armies were in the field. Congress, then, was to decide whether the tie which had so long bound us to the parent State was to be severed at once, and severed forever. All the Colonies had signified their resolution to abide by this decision, and the people looked for it with the most intense anxiety. And surely, fellow citizens, never, never were men called to a more important political deliberation. If we contemplate it from the point where they then stood, no question could be more full of interest; if we look at it now, and judge of its importance by its effects, it appears of still greater magnitude.

Let us, then, bring before us the assembly, which was about to decide a question thus big with the fate of empire. Let us open their doors and look in upon their deliberations. Let us survey the anxious and careworn countenances, let us hear the firm-toned voices, of this band of patriots.

Hancock presides over the solemn sitting; and one of

those not yet prepared to pronounce for absolute independence is on the floor, and is urging his reasons for dissenting from the Declaration.

"Let us pause! This step, once taken, cannot be retraced. This resolution, once passed, will cut off all hope of reconciliation. If success attend the arms of England, we shall then be no longer Colonies, with charters and with privileges; these will all be forfeited by this act; and we shall be in the condition of other conquered people, at the mercy of the conquerors. For ourselves, we may be ready to run the hazard; but are we ready to carry the country to that length? Is success so probable as to justify it? Where is the military, where the naval power, by which we are to resist the whole strength of the arm of England —for she will exert that strength to the utmost? Can we rely on the constancy and perseverance of the people? or will they not act as the people of other countries have acted, and, wearied with a long war, submit, in the end, to a worse oppression? While we stand on our old ground, and insist on redress of grievances, we know we are right, and are not answerable for consequences. Nothing, then, can be imputed to us. But if we now change our object, carry our pretensions further, and set up for absolute independence, we shall lose the sympathy of mankind. We shall no longer be defending what we possess, but struggling for something which we never did possess, and which we have solemnly and uniformly disclaimed all intention of pursuing, from the very outset of the troubles. Abandoning thus our old ground, of resistance only to arbitrary acts of oppression, the nations will believe the whole to have been mere pretence, and they will look on us, not as injured, but as ambitious subjects. I shudder before this responsibility.

It will be on us, if, relinquishing the ground on which we have stood so long, and stood so safely, we now proclaim independence, and carry on the war for that object, while these cities burn, these pleasant fields whiten and bleach with the bones of their owners, and these streams run blood. It will be upon us, it will be upon us, if, failing to maintain this unseasonable and ill-judged Declaration, a sterner despotism, maintained by military power, shall be established over our posterity, when we ourselves, given up by an exhausted, a harassed, a misled people, shall have expiated our rashness and atoned for our presumption on the scaffold."

It was for Mr. Adams to reply to arguments like these. We know his opinions, and we know his character. He would commence with his accustomed directness and earnestness.

"Sink or swim, live or die, survive or perish, I give my hand and my heart to this vote. It is true, indeed, that in the beginning we aimed not at independence. But there's a Divinity which shapes our ends. The injustice of England has driven us to arms; and, blinded to her own interest for our good, she has obstinately persisted, till independence is now within our grasp. We have but to reach forth to it, and it is ours. Why, then, should we defer the Declaration? Is any man so weak as now to hope for a reconciliation with England, which shall leave either safety to the country and its liberties, or safety to his own life and his own honor? Are not you, sir, who sit in that chair—is not he, our venerable colleague near you—are you not both already the proscribed and predestined objects of punishment and vengeance? Cut off from all hope of royal clemency, what are you, what can you be, while the power of England

remains, but outlaws? If we postpone independence, do we mean to carry on, or to give up, the war? Do we mean to submit to the measures of Parliament, Boston Port Bill and all? Do we mean to submit, and consent that we ourselves shall be ground to powder, and our country and its right trodden down in the dust? I know we do not mean to submit. We never shall submit. Do we intend to violate that most solemn obligation ever entered into by men, that plighting, before God, of our sacred honor to Washington, when, putting him forth to incur the dangers of war, as well as the political hazards of the times, we promised to adhere to him, in every extremity, with our fortunes and our lives? I know there is not a man here who would not rather see a general conflagration sweep over the land, or an earthquake sink it, than one jot or tittle of that plighted faith fall to the ground. For myself, having, twelve months ago, in this place, moved you, that George Washington be appointed commander of the forces raised, or to be raised, for defence of American liberty, may my right hand forget her cunning, and my tongue cleave to the roof of my mouth, if I hesitate or waver in the support I give him.

"The war, then, must go on. We must fight it through. And if the war must go on, why put off longer the Declaration of Independence? That measure will strengthen us. It will give us character abroad. The nations will then treat with us, which they never can do while we acknowledge ourselves subjects, in arms against our sovereign. Nay, I maintain that England herself will sooner treat for peace with us on the footing of independence, than consent, by repealing her acts, to acknowledge that her whole conduct toward us has been a course of injustice

and oppression. Her pride will be less wounded by submitting to that course of things which now predestinates our independence, than by yielding the points in controversy to her rebellious subjects. The former she would regard as the result of fortune; the latter she would feel as her own deep disgrace. Why then, why then, sir, do we not as soon as possible change this from a civil to a national war? And since we must fight it through, why not put ourselves in a state to enjoy all the benefits of victory, if we gain the victory?

"If we fail it can be no worse for us. But we shall not fail. The cause will raise up armies; the cause will create navies. The people, the people, if we are true to them, will carry us, and will carry themselves, gloriously, through this struggle. I care not how fickle other people have been found. I know the people of these Colonies, and I know that resistance to British aggression is deep and settled in their hearts and cannot be eradicated. Every Colony, indeed, has expressed its willingness to follow, if we but take the lead. Sir, the Declaration will inspire the people with increased courage. Instead of a long and bloody war for the restoration of privileges, for redress of grievances, for chartered immunities, held under a British king, set before them the glorious object of entire independence, and it will breathe into them anew the breath of life. Read this Declaration at the head of the army; every sword will be drawn from its scabbard, and the solemn vow uttered, to maintain it, or to perish on the bed of honor. Publish it from the pulpit; religion will approve it, and the love of religious liberty will cling round it, resolved to stand with it, or fall with it. Send it to the public halls; proclaim it there; let them hear it who heard the first roar of the enemy's cannon; let

them see it who saw their brothers and their sons fall on the field of Bunker Hill, and in the streets of Lexington and Concord, and the very walls will cry out in its support.

"Sir, I know the uncertainty of human affairs, but I see, I see clearly, through this day's business. You and I, indeed, may rue it. We may not live to the time when this Declaration shall be made good. We may die; die Colonists; die slaves; die, it may be, ignominiously and on the scaffold. Be it so. Be it so. If it be the pleasure of Heaven that my country shall require the poor offering of my life, the victim shall be ready, at the appointed hour of sacrifice, come when that hour may. But while I do live, let me have a country, or at least the hope of a country, and that a free country.

"But whatever may be our fate, be assured, be assured that this Declaration will stand. It may cost treasure, and it may cost blood; but it will stand, and it will richly compensate for both. Through the thick gloom of the present, I see the brightness of the future, as the sun in heaven. We shall make this a glorious, an immortal day. When we are in our graves, our children will honor it. They will celebrate it with thanksgiving, with festivity, with bonfires, and illuminations. On its annual return they will shed tears, copious, gushing tears, not of subjection and slavery, not of agony and distress, but of exultation, of gratitude, and of joy. Sir, before God, I believe the hour is come. My judgment approves this measure, and my whole heart is in it. All that I have, and all that I am, and all that I hope, in this life, I am now ready here to stake upon it; and I leave off as I began, that live or die, survive or perish, I am for the Declaration. It is my living sentiment, and

by the blessing of God it shall be my dying sentiment, Independence now, and Independence forever."

And so that day shall be honored, illustrious prophet and patriot! so that day shall be honored, and as often as it returns, thy renown shall come along with it, and the glory of thy life, like the day of thy death, shall not fail from the remembrance of men.

It would be unjust, fellow citizens, on this occasion, while we express our veneration for him who is the immediate subject of these remarks, were we to omit a most respectful, affectionate, and grateful mention of those other great men, his colleagues, who stood with him, and with the same spirit, the same devotion, took part in the interesting transaction. Hancock, the proscribed Hancock, exiled from his home by a military governor, cut off by proclamation from the mercy of the crown—Heaven reserved for him the distinguished honor of putting this great question to the vote, and of writing his own name first, and most conspicuously, on that parchment which spoke defiance to the power of the crown of England. There, too, is the name of that other proscribed patriot, Samuel Adams, a man who hungered and thirsted for the independence of his country, who thought the Declaration halted and lingered, being himself not only ready, but eager, for it, long before it was proposed; a man of the deepest sagacity, the clearest foresight, and the profoundest judgment in men. And there is Gerry, himself among the earliest and the foremost of the patriots, found, when the battle of Lexington summoned them to common counsels, by the side of Warren; a man who lived to serve his country at home and abroad, and to die in the second place in the government. There, too,

is the inflexible, the upright, the Spartan character, Robert Treat Paine. He also lived to serve his country through the struggle, and then withdrew from her councils, only that he might give his labors and his life to his native State, in another relation. These names, fellow citizens, are the treasures of the Commonwealth; and they are treasures which grow brighter by time.

It is now necessary to resume the narrative, and to finish with great brevity the notice of the lives of those whose virtues and services we have met to commemorate.

Mr. Adams remained in Congress from the first meeting till November, 1777, when he was appointed Minister to France. He proceeded on that service in the February following, embarking in the frigate "Boston," from the shore of his native town, at the foot of Mount Wollaston. The year following, he was appointed Commissioner to treat of peace with England. Returning to the United States, he was a delegate from Braintree in the Convention for framing the Constitution of this Commonwealth, in 1780. At the latter end of the same year, he again went abroad in the diplomatic service of the country, and was employed at various courts, and occupied with various negotiations, until 1788. The particulars of these interesting and important services this occasion does not allow time to relate. In 1782 he concluded our first treaty with Holland. His negotiations with that republic, his efforts to persuade the States-General to recognize our independence, his incessant and indefatigable exertions to represent the American cause favorably on the Continent, and to counteract the designs of its enemies, open and secret, and his successful undertaking to obtain loans on the credit of a nation yet new and un-

known, are among his most arduous, most useful, most honorable services. It was his fortune to bear a part in the negotiation for peace with England, and in something more than six years from the Declaration which he had so strenuously supported, he had the satisfaction of seeing the Minister Plenipotentiary of the Crown subscribe his name to the instrument which declared that his "Britannic Majesty acknowledged the United States to be free, sovereign, and independent." In these important transactions, Mr. Adams' conduct received the marked approbation of Congress and of the country.

While abroad, in 1787, he published his "Defence of the American Constitutions," a work of merit and ability, though composed with haste, on the spur of a particular occasion, in the midst of other occupations, and under circumstances not admitting of careful revision. The immediate object of the work was to counteract the weight of opinions advanced by several popular European writers of that day, M. Turgot, the Abbé de Mably, and Dr. Price, at a time when the people of the United States were employed in forming and revising their systems of government.

Returning to the United States in 1788, he found the new government about going into operation, and was himself elected the first Vice-President, a situation which he filled with reputation for eight years, at the expiration of which he was raised to the Presidential chair, as immediate successor to the immortal Washington. In this high station he was succeeded by Mr. Jefferson, after a memorable controversy between their respective friends, in 1801; and from that period his manner of life has been known to all who hear me. He has lived, for five-and-twenty years, with every enjoyment that could render old age happy. Not in-

attentive to the occurrences of the times, political cares have yet not materially, or for any long time, disturbed his repose. In 1820 he acted as Elector of President and Vice-President, and in the same year we saw him, then at the age of eighty-five, a member of the Convention of this Commonwealth called to revise the Constitution. Forty years before, he had been one of those who formed that Constitution; and he had now the pleasure of witnessing that there was little which the people desired to change. Possessing all his faculties to the end of his long life, with an unabated love of reading and contemplation, in the centre of interesting circles of friendship and affection, he was blessed in his retirement with whatever of repose and felicity the condition of man allows. He had, also, other enjoyments. He saw around him that prosperity and general happiness which had been the object of his public cares and labors. No man ever beheld more clearly, and for a longer time, the great and beneficial effects of the services rendered by himself to his country. That liberty which he so early defended, that independence of which he was so able an advocate and supporter, he saw, we trust, firmly and securely established. The population of the country thickened around him faster, and extended wider, than his own sanguine predictions had anticipated; and the wealth, respectability, and power of the nation sprang up to a magnitude which it is quite impossible he could have expected to witness in his day. He lived also to behold those principles of civil freedom which had been developed, established, and practically applied in America, attract attention, command respect, and awaken imitation, in other regions of the globe; and well might, and well did, he exclaim, "Where will the consequences of the American Revolution end?"

If anything yet remain to fill this cup of happiness, let it be added, that he lived to see a great and intelligent people bestow the highest honor in their gift where he had bestowed his own kindest parental affections and lodged his fondest hopes. Thus honored in life, thus happy at death, he saw the jubilee, and he died; and with the last prayers which trembled on his lips was the fervent supplication for his country, "Independence forever!"

Mr. Jefferson, having been occupied in the years 1778 and 1779 in the important services of revising the laws of Virginia, was elected governor of that State, as successor to Patrick Henry, and held the situation when the State was invaded by the British arms. In 1781 he published his "Notes on Virginia," a work which attracted attention in Europe as well as America, dispelled many misconceptions respecting this continent, and gave its author a place among men distinguished for science. In November, 1783, he again took his seat in the Continental Congress, but in the May following was appointed Minister Plenipotentiary, to act abroad, in the negotiation of commercial treaties, with Dr. Franklin and Mr. Adams. He proceeded to France, in execution of this mission, embarking at Boston; and that was the only occasion on which he ever visited this place. In 1785 he was appointed Minister to France, the duties of which situation he continued to perform until October, 1789, when he obtained leave to retire, just on the eve of that tremendous revolution which has so much agitated the world in our times. Mr. Jefferson's discharge of his diplomatic duties was marked by great ability, diligence, and patriotism; and while he resided at Paris, in one of the most interesting periods, his character for intelligence, his love of

knowledge and of the society of learned men, distinguished him in the highest circles of the French capital. No court in Europe had at that time in Paris a representative commanding or enjoying higher regard, for political knowledge or for general attainments, than the Minister of this then infant Republic. Immediately on his return to his native country, at the organization of the government under the present Constitution, his talents and experience recommended him to President Washington for the first office in his gift. He was placed at the head of the Department of State. In this situation, also, he manifested conspicuous ability. His correspondence with the Ministers of other powers residing here, and his instructions to our own diplomatic agents abroad, are among our ablest state papers. A thorough knowledge of the laws and usages of nations, perfect acquaintance with the immediate subject before him, great felicity, and still greater facility, in writing, show themselves in whatever effort his official situation called on him to make. It is believed by competent judges, that the diplomatic intercourse of the government of the United States, from the first meeting of the Continental Congress in 1774 to the present time, taken together, would not suffer, in respect to the talent with which it has been conducted, by comparison with anything which other and older governments can produce; and to the attainment of this respectability and distinction Mr. Jefferson has contributed his full part.

On the retirement of General Washington from the Presidency, and the election of Mr. Adams to that office in 1797, he was chosen Vice-President. While presiding in this capacity over the deliberations of the Senate, he compiled and published a "Manual of Parliamentary Practice,"

a work of more labor and more merit than is indicated by its size. It is now received as the general standard by which proceedings are regulated, not only in both Houses of Congress, but in most of the other legislative bodies in the country. In 1801 he was elected President, in opposition to Mr. Adams, and re-elected in 1805, by a vote approaching toward unanimity.

From the time of his final retirement from public life, in 1809, Mr. Jefferson lived as became a wise man. Surrounded by affectionate friends, his ardor in the pursuit of knowledge undiminished, with uncommon health and unbroken spirits, he was able to enjoy largely the rational pleasures of life, and to partake in that public prosperity which he had so much contributed to produce. His kindness and hospitality, the charm of his conversation, the ease of his manners, the extent of his acquirements, and, especially, the full store of Revolutionary incidents which he had treasured in his memory, and which he knew when and how to dispense, rendered his abode in a high degree attractive to his admiring countrymen, while his high public and scientific character drew toward him every intelligent and educated traveller from abroad. Both Mr. Adams and Mr. Jefferson had the pleasure of knowing that the respect which they so largely received was not paid to their official stations. They were not men made great by office; but great men, on whom the country for its own benefit had conferred office. There was that in them which office did not give, and which the relinquishment of office did not, and could not, take away. In their retirement, in the midst of their fellow citizens, themselves private citizens, they enjoyed as high regard and esteem as when filling the most important places of public trust.

There remained to Mr. Jefferson yet one other work of patriotism and beneficence, the establishment of a university in his native State. To this object he devoted years of incessant and anxious attention, and by the enlightened liberality of the Legislature of Virginia, and the cooperation of other able and zealous friends, he lived to see it accomplished. May all success attend this infant seminary; and may those who enjoy its advantages, as often as their eyes shall rest on the neighboring height, recollect what they owe to their disinterested and indefatigable benefactor; and may letters honor him who thus labored in the cause of letters!

Thus useful, and thus respected, passed the old age of Thomas Jefferson. But time was on its ever ceaseless wing, and was now bringing the last hour of this illustrious man. He saw its approach with undisturbed serenity. He counted the moments as they passed, and beheld that his last sands were falling. That day, too, was at hand which he had helped to make immortal. One wish, one hope, if it were not presumptuous, beat in his fainting breast. Could it be so, might it please God, he would desire once more to see the sun, once more to look abroad on the scene around him, on the great day of liberty. Heaven, in its mercy, fulfilled that prayer. He saw that sun, he enjoyed its sacred light, he thanked God for this mercy, and bowed his aged head to the grave. "Felix, non vitæ tantum claritate, sed etiam opportunitate mortis."

The last public labor of Mr. Jefferson naturally suggests the expression of the high praise which is due, both to him and to Mr. Adams, for their uniform and zealous attachment to learning, and to the cause of general knowledge. Of the advantages of learning, indeed, and of literary ac-

complishments, their own characters were striking recommendations and illustrations. They were scholars, ripe and good scholars; widely acquainted with ancient, as well as modern literature, and not altogether uninstructed in the deeper sciences. Their acquirements, doubtless, were different, and so were the particular objects of their literary pursuits; as their tastes and characters, in these respects, differed like those of other men. Being, also, men of busy lives, with great objects requiring action constantly before them, their attainments in letters did not become showy or obtrusive. Yet I would hazard the opinion, that, if we could now ascertain all the causes which gave them eminence and distinction in the midst of the great men with whom they acted, we should find not among the least their early acquisitions in literature, the resources which it furnished, the promptitude and facility which it communicated, and the wide field it opened for analogy and illustration; giving them thus, on every subject, a larger view and a broader range, as well for discussion as for the government of their own conduct.

Literature sometimes disgusts, and pretension to it much oftener disgusts, by appearing to hang loosely on the character, like something foreign or extraneous, not a part, but an ill-adjusted appendage; or by seeming to overload and weigh it down by its unsightly bulk, like the productions of bad taste in architecture, where there is massy and cumbrous ornament without strength or solidity of column. This has exposed learning, and especially classical learning, to reproach. Men have seen that it might exist without mental superiority, without vigor, without good taste, and without utility. But in such cases classical learning has only not inspired natural talent; or, at most, it has

but made original feebleness of intellect, and natural bluntness of perception, something more conspicuous. The question, after all, if it be a question, is, whether literature, ancient as well as modern, does not assist a good understanding, improve natural good taste, add polished armor to native strength, and render its possessor, not only more capable of deriving private happiness from contemplation and reflection, but more accomplished also for action in the affairs of life, and especially for public action. Those whose memories we now honor were learned men; but their learning was kept in its proper place, and made subservient to the uses and objects of life. They were scholars, not common nor superficial; but their scholarship was so in keeping with their character, so blended and inwrought, that careless observers, or bad judges, not seeing an ostentatious display of it, might infer that it did not exist; forgetting, or not knowing, that classical learning in men who act in conspicuous public stations, perform duties which exercise the faculty of writing, or address popular, deliberative, or judicial bodies, is often felt where it is little seen, and sometimes felt more effectually because it is not seen at all.

But the cause of knowledge, in a more enlarged sense, the cause of general knowledge and of popular education, had no warmer friends, nor more powerful advocates, than Mr. Adams and Mr. Jefferson. On this foundation they knew the whole republican system rested; and this great and all-important truth they strove to impress, by all the means in their power. In the early publication already referred to, Mr. Adams expresses the strong and just sentiment, that the education of the poor is more important, even to the rich themselves, than all their own riches. On this great truth, indeed, is founded that unrivalled, that

invaluable political and moral institution, our own blessing and the glory of our fathers, the New England system of free schools.

As the promotion of knowledge had been the object of their regard through life, so these great men made it the subject of their testamentary bounty. Mr. Jefferson is understood to have bequeathed his library to the University of Virginia, and that of Mr. Adams is bestowed on the inhabitants of Quincy.

Mr. Adams and Mr. Jefferson, fellow citizens, were successively Presidents of the United States. The comparative merits of their respective administrations for a long time agitated and divided public opinion. They were rivals, each supported by numerous and powerful portions of the people, for the highest office. This contest, partly the cause and partly the consequence of the long existence of two great political parties in the country, is now part of the history of our government. We may naturally regret that anything should have occurred to create difference and discord between those who had acted harmoniously and efficiently in the great concerns of the Revolution. But this is not the time, nor this the occasion, for entering into the grounds of that difference, or for attempting to discuss the merits of the questions which it involves. As practical questions, they were canvassed when the measures which they regarded were acted on and adopted; and as belonging to history, the time has not come for their consideration.

It is, perhaps, not wonderful that, when the Constitution of the United States first went into operation, different opinions should be entertained as to the extent of the powers conferred by it. Here was a natural source of

diversity of sentiment. It is still less wonderful, that that event, nearly contemporary with our government under the present Constitution, which so entirely shocked all Europe, and disturbed our relations with her leading powers, should be thought, by different men, to have different bearings on our own prosperity; and that the early measures adopted by the government of the United States, in consequence of this new state of things, should be seen in opposite lights. It is for the future historian, when what now remains of prejudice and misconception shall have passed away, to state these different opinions, and pronounce impartial judgment. In the meantime all good men rejoice, and well may rejoice, that the sharpest differences sprung out of measures which, whether right or wrong, have ceased with the exigencies that gave them birth, and have left no permanent effect, either on the Constitution or on the general prosperity of the country. This remark, I am aware, may be supposed to have its exception in one measure, the alteration of the Constitution as to the mode of choosing a President; but it is true in its general application. Thus the course of policy pursued toward France in 1798, on the one hand, and the measures of commercial restriction commenced in 1807, on the other, both subjects of warm and severe opposition, have passed away and left nothing behind them. They were temporary, and, whether wise or unwise, their consequences were limited to their respective occasions. It is equally clear, at the same time, and it is equally gratifying, that those measures of both administrations which were of durable importance, and which drew after them momentous and long remaining consequences, have received general approbation. Such was the organization, or rather the creation, of the navy, in the administra-

tion of Mr. Adams; such the acquisition of Louisiana in that of Mr. Jefferson. The country, it may safely be added, is not likely to be willing either to approve, or to reprobate, indiscriminately, and in the aggregate, all the measures of either, or of any, administration. The dictate of reason and of justice is, that, holding each one his own sentiments on the points of difference, we imitate the great men themselves in the forbearance and moderation which they have cherished, and in the mutual respect and kindness which they have been so much inclined to feel and to reciprocate.

No men, fellow citizens, ever served their country with more entire exemption from every imputation of selfish and mercenary motives, than those to whose memory we are paying these proofs of respect. A suspicion of any disposition to enrich themselves or to profit by their public employments, never rested on either. No sordid motive approached them. The inheritance which they have left to their children is of their character and their fame.

Fellow citizens, I will detain you no longer by this faint and feeble tribute to the memory of the illustrious dead. Even in other hands, adequate justice could not be done to them, within the limits of this occasion. Their highest, their best praise, is your deep conviction of their merits, your affectionate gratitude for their labors and their services. It is not my voice, it is this cessation of ordinary pursuits, this arresting of all attention, these solemn ceremonies, and this crowded house, which speak their eulogy. Their fame, indeed, is safe. That is now treasured up beyond the reach of accident. Although no sculptured marble should rise to their memory, nor engraved stone bear record of their deeds, yet will their remembrance be

as lasting as the land they honored. Marble columns may, indeed, moulder into dust, time may erase all impress from the crumbling stone, but their fame remains; for with American liberty it rose, and with American liberty only can it perish. It was the last swelling peal of yonder choir, "Their Bodies are Buried in Peace, but their Name Liveth Evermore." I catch that solemn song, I echo that lofty strain of funeral triumph, "Their name liveth evermore."

Of the illustrious signers of the Declaration of Independence there now remains only Charles Carroll. He seems an aged oak, standing alone on the plain, which time has spared a little longer after all its contemporaries have been levelled with the dust. Venerable object! we delight to gather round its trunk, while yet it stands, and to dwell beneath its shadow. Sole survivor of an assembly of as great men as the world has witnessed, in a transaction one of the most important that history records, what thoughts, what interesting reflections, must fill his elevated and devout soul! If he dwell on the past, how touching its recollections; if he survey the present, how happy, how joyous, how full of the fruition of that hope which his ardent patriotism indulged; if he glance at the future, how does the prospect of his country's advancement almost bewilder his weakened conception! Fortunate, distinguished patriot! Interesting relic of the past! Let him know that, while we honor the dead, we do not forget the living; and that there is not a heart here which does not fervently pray that Heaven may keep him yet back from the society of his companions.

And now, fellow citizens, let us not retire from this oc-

casion without a deep and solemn conviction of the duties which have devolved upon us. This lovely land, this glorious liberty, these benign institutions, the dear purchase of our fathers, are ours; ours to enjoy, ours to preserve, ours to transmit. Generations past and generations to come hold us responsible for this sacred trust. Our fathers, from behind, admonish us, with their anxious paternal voices; posterity calls out to us from the bosom of the future; the world turns hither its solicitous eyes; all, all conjure us to act wisely, and faithfully, in the relation which we sustain. We can never, indeed, pay the debt which is upon us; but by virtue, by morality, by religion, by the cultivation of every good principle and every good habit, we may hope to enjoy the blessing, through our day, and to leave it unimpaired to our children. Let us feel deeply how much of what we are and of what we possess we owe to this liberty, and to these institutions of government. Nature has, indeed, given us a soil which yields bounteously to the hand of industry, the mighty and fruitful ocean is before us, and the skies over our heads shed health and vigor. But what are lands, and seas, and skies to civilized man, without society, without knowledge, without morals, without religious culture; and how can these be enjoyed, in all their extent and all their excellence, but under the protection of wise institutions and a free government? Fellow citizens, there is not one of us, there is not one of us here present, who does not, at this moment, and at every moment, experience, in his own condition, and in the condition of those most near and dear to him, the influence and the benefits of this liberty and these institutions. Let us then acknowledge the blessing, let us feel it deeply and powerfully, let us cherish a strong affec-

tion for it, and resolve to maintain and perpetuate it. The blood of our fathers, let it not have been shed in vain; the great hope of posterity, let it not be blasted.

The striking attitude, too, in which we stand to the world around us, a topic to which, I fear, I advert too often, and dwell on too long, cannot be altogether omitted here. Neither individuals nor nations can perform their part well, until they understand and feel its importance, and comprehend and justly appreciate all the duties belonging to it. It is not to inflate national vanity, nor to swell a light and empty feeling of self-importance, but it is that we may judge justly of our situation, and of our own duties, that I earnestly urge upon you this consideration of our position and our character among the nations of the earth. It cannot be denied, but by those who would dispute against the sun, that with America, and in America, a new era commences in human affairs. This era is distinguished by free representative governments, by entire religious liberty, by improved systems of national intercourse, by a newly awakened and an unconquerable spirit of free inquiry, and by a diffusion of knowledge through the community, such as has been before altogether unknown and unheard of. America, America, our country, fellow citizens, our own dear and native land, is inseparably connected, fast bound up, in fortune and by fate, with these great interests. If they fall, we fall with them; if they stand, it will be because we have maintained them. Let us contemplate, then, this connection, which binds the prosperity of others to our own; and let us manfully discharge all the duties which it imposes. If we cherish the virtues and the principles of our fathers, Heaven will assist us to carry on the work of human liberty and human happiness.

Auspicious omens cheer us. Great examples are before us. Our own firmament now shines brightly upon our path. Washington is in the clear, upper sky. These other stars have now joined the American constellation; they circle round their centre, and the heavens beam with new light. Beneath this illumination let us walk the course of life, and at its close devoutly commend our beloved country, the common parent of us all, to the Divine Benignity.

THE CONSTITUTION NOT A COMPACT BETWEEN SOVEREIGN STATES

A SPEECH DELIVERED IN THE SENATE, FEBRUARY 16, 1833, IN REPLY TO MR. CALHOUN'S SPEECH ON THE BILL "FURTHER TO PROVIDE FOR THE COLLECTION OF DUTIES ON IMPORTS"

Mr. President:

THE gentleman from South Carolina has admonished us to be mindful of the opinions of those who shall come after us. We must take our chance, sir, as to the light in which posterity will regard us. I do not decline its judgment, nor withhold myself from its scrutiny. Feeling that I am performing my public duty with singleness of heart and to the best of my ability, I fearlessly trust myself to the country, now and hereafter, and leave both my motives and my character to its decision.

The gentleman has terminated his speech in a tone of threat and defiance toward this bill, even should it become a law of the land, altogether unusual in the halls of Congress. But I shall not suffer myself to be excited into warmth by his denunciation of the measure which I support. Among the feelings which at this moment fill

my breast, not the least is that of regret at the position in which the gentleman has placed himself. Sir, he does himself no justice. The cause which he has espoused finds no basis in the Constitution, no succor from public sympathy, no cheering from a patriotic community. He has no foothold on which to stand while he might display the powers of his acknowledged talents. Everything beneath his feet is hollow and treacherous. He is like a strong man struggling in a morass: every effort to extricate himself only sinks him deeper and deeper. And I fear the resemblance may be carried still further; I fear that no friend can safely come to his relief, that no one can approach near enough to hold out a helping hand, without danger of going down himself, also, into the bottomless depths of this Serbonian bog.

The honorable gentleman has declared that on the decision of the question now in debate may depend the cause of liberty itself. I am of the same opinion; but then, sir, the liberty which I think is staked on the contest is not political liberty, in any general and undefined character, but our own well-understood and long-enjoyed American liberty.

Sir, I love Liberty no less ardently than the gentleman himself, in whatever form she may have appeared in the progress of human history. As exhibited in the master states of antiquity, as breaking out again from amid the darkness of the Middle Ages, and beaming on the formation of new communities in modern Europe, she has, always and everywhere, charms for me. Yet, sir, it is our own liberty, guarded by constitutions and secured by union, it is that liberty which is our paternal inheritance, it is our established, dear-bought, peculiar American liberty, to which I am chiefly devoted, and the cause of which I now mean, to the utmost of my power, to maintain and defend.

Mr. President, if I considered the constitutional question now before us as doubtful as it is important, and if I supposed that its decision, either in the Senate or by the country, was likely to be in any degree influenced by the manner in which I might now discuss it, this would be to me a moment of deep solicitude. Such a moment has once existed. There has been a time, when, rising in this place, on the same question, I felt, I must confess, that something for good or evil to the Constitution of the country might depend on an effort of mine. But circumstances are changed. Since that day, sir, the public opinion has become awakened to this great question; it has grasped it; it has reasoned upon it, as becomes an intelligent and patriotic community, and has settled it, or now seems in the process of settling it, by an authority which none can disobey, the authority of the people themselves.

I shall not, Mr. President, follow the gentleman, step by step, through the course of his speech. Much of what he has said he has deemed necessary to the just explanation and defence of his own political character and conduct. On this I shall offer no comment. Much, too, has consisted of philosophical remark upon the general nature of political liberty, and the history of free institutions; and upon other topics, so general in their nature as to possess, in my opinion, only a remote bearing on the immediate subject of this debate.

But the gentleman's speech made some days ago, upon introducing his resolutions, those resolutions themselves, and parts of the speech now just concluded, may, I presume, be justly regarded as containing the whole South Carolina doctrine. That doctrine it is my purpose now to examine, and to compare it with the Constitution of the

United States. I shall not consent, sir, to make any new constitution, or to establish another form of government. I will not undertake to say what a constitution for these United States ought to be. That question the people have decided for themselves; and I shall take the instrument as they have established it, and shall endeavor to maintain it, in its plain sense and meaning, against opinions and notions which, in my judgment, threaten its subversion.

The resolutions introduced by the gentleman were apparently drawn up with care, and brought forward upon deliberation. I shall not be in danger, therefore, of misunderstanding him, or those who agree with him, if I proceed at once to these resolutions, and consider them as an authentic statement of those opinions upon the great constitutional question by which the recent proceedings in South Carolina are attempted to be justified.

These resolutions are three in number.

The third seems intended to enumerate, and to deny, the several opinions expressed in the President's proclamation, respecting the nature and powers of this government. Of this third resolution, I purpose, at present, to take no particular notice.

The first two resolutions of the honorable member affirm these propositions, viz.:

1. That the political system under which we live, and under which Congress is now assembled, is a compact, to which the people of the several States, as separate and sovereign communities, are the parties.

2. That these sovereign parties have a right to judge, each for itself, of any alleged violation of the Constitution by Congress; and, in case of such violation, to choose, each for itself, its own mode and measure of redress.

It is true, sir, that the honorable member calls this a "constitutional" compact; but still he affirms it to be a compact between sovereign States. What precise meaning, then, does he attach to the term constitutional? When applied to compacts between sovereign States, the term constitutional affixes to the word compact no definite idea. Were we to hear of a constitutional league or treaty between England and France, or a constitutional convention between Austria and Russia, we should not understand what could be intended by such a league, such a treaty, or such a convention. In these connections, the word is void of all meaning; and yet, sir, it is easy, quite easy, to see why the honorable gentleman has used it in these resolutions. He cannot open the book, and look upon our written frame of government, without seeing that it is called a constitution. This may well be appalling to him. It threatens his whole doctrine of compact, and its darling derivatives, nullification and secession, with instant confutation. Because, if he admits our instrument of government to be a constitution, then, for that very reason, it is not a compact between sovereigns; a constitution of government and a compact between sovereign powers being things essentially unlike in their very natures, and incapable of ever being the same. Yet the word constitution is on the very front of the instrument. He cannot overlook it. He seeks, therefore, to compromise the matter, and to sink all the substantial sense of the word, while he retains a resemblance of its sound. He introduces a new word of his own, viz., compact, as importing the principal idea, and designed to play the principal part, and degrades constitution into an insignificant, idle epithet, attached to compact. The whole, then, stands as a "constitutional compact"!

And in this way he hopes to pass off a plausible gloss, as satisfying the words of the instrument. But he will find himself disappointed. Sir, I must say to the honorable gentleman, that, in our American political grammar, Constitution is a noun substantive; it imports a distinct and clear idea of itself; and it is not to lose its importance and dignity, it is not to be turned into a poor, ambiguous, senseless, unmeaning adjective, for the purpose of accommodating any new set of political notions. Sir, we reject his new rules of syntax altogether. We will not give up our forms of political speech to the grammarians of the school of nullification. By the Constitution, we mean, not a "constitutional compact," but, simply and directly, the Constitution, the fundamental law; and if there be one word in the language which the people of the United States understand, this is that word. We know no more of a constitutional compact between sovereign powers, than we know of a constitutional indenture of copartnership, a constitutional deed of conveyance, or a constitutional bill of exchange. But we know what the Constitution is; we know what the plainly written fundamental law is; we know what the bond of our Union and the security of our liberties is; and we mean to maintain and to defend it, in its plain sense and unsophisticated meaning.

The sense of the gentleman's proposition, therefore, is not at all affected, one way or the other, by the use of this word. That proposition still is, that our system of government is but a compact between the people of separate and sovereign States.

Was it Mirabeau, Mr. President, or some other master of the human passions, who has told us that words are things? They are indeed things, and things of mighty influence, not

only in addresses to the passions and high-wrought feelings of mankind, but in the discussion of legal and political questions also; because a just conclusion is often avoided, or a false one reached, by the adroit substitution of one phrase, or one word, for another. Of this we have, I think, another example in the resolutions before us.

The first resolution declares that the people of the several States "acceded" to the Constitution, or to the constitutional compact, as it is called. This word "accede," not found either in the Constitution itself, or in the ratification of it by any one of the States, has been chosen for use here, doubtless, not without a well-considered purpose.

The natural converse of accession is secession; and, therefore, when it is stated that the people of the States acceded to the Union, it may be more plausibly argued that they may secede from it. If, in adopting the Constitution, nothing was done but acceding to a compact, nothing would seem necessary, in order to break it up, but to secede from the same compact. But the term is wholly out of place. Accession, as a word applied to political associations, implies coming into a league, treaty, or confederacy, by one hitherto a stranger to it; and secession implies departing from such league or confederacy. The people of the United States have used no such form of expression in establishing the present government. They do not say that they accede to a league, but they declare that they ordain and establish a Constitution. Such are the very words of the instrument itself; and in all the States, without an exception, the language used by their conventions was, that they "ratified the Constitution"; some of them employing the additional words "assented to" and "adopted," but all of them "ratifying."

There is more importance than may, at first sight, appear in the introduction of this new word, by the honorable mover of these resolutions. Its adoption and use are indispensable to maintain those premises from which his main conclusion is to be afterward drawn. But before showing that, allow me to remark, that this phraseology tends to keep out of sight the just view of a previous political history, as well as to suggest wrong ideas as to what was actually done when the present Constitution was agreed to. In 1789, and before this Constitution was adopted, the United States had already been in a Union, more or less close, for fifteen years. At least as far back as the meeting of the first Congress, in 1774, they had been in some measure, and for some national purposes, united together. Before the Confederation of 1781, they had declared independence jointly, and had carried on the war jointly, both by sea and land; and this not as separate States, but as one people. When, therefore, they formed that Confederation, and adopted its articles as articles of perpetual Union, they did not come together for the first time; and therefore they did not speak of the States as acceding to the Confederation, although it was a league, and nothing but a league, and rested on nothing but plighted faith for its performance. Yet, even then, the States were not strangers to each other; there was a bond of Union already subsisting between them; they were associated, united States; and the object of the Confederation was to make a stronger and better bond of union. Their representatives deliberated together on these proposed Articles of Confederation, and being authorized by their respective States, finally "ratified and confirmed" them. Inasmuch as they were already in union, they did not speak of acceding to the new Articles of Confederation,

but of ratifying and confirming them; and this language was not used inadvertently, because, in the same instrument, accession is used in its proper sense, when applied to Canada, which was altogether a stranger to the existing union. "Canada," says the eleventh article, "acceding to the Confederation, and joining in the measures of the United States, shall be admitted into the Union."

Having thus used the terms ratify and confirm, even in regard to the old Confederation, it would have been strange indeed, if the people of the United States, after its formation, and when they came to establish the present Constitution, had spoken of the States, or the people of the States, as acceding to this Constitution. Such language would have been ill-suited to the occasion. It would have implied an existing separation or disunion among the States, such as never has existed since 1774. No such language, therefore, was used. The language actually employed is, adopt, ratify, ordain, establish.

Therefore, sir, since any State, before she can prove her right to dissolve the Union, must show her authority to undo what has been done, no State is at liberty to secede, on the ground that she and other States have done nothing but accede. She must show that she has a right to reverse what has been ordained, to unsettle and overthrow what has been established, to reject what the people have adopted, and to break up what they have ratified; because these are the terms which express the transactions which have actually taken place. In other words, she must show her right to make a revolution.

If, Mr. President, in drawing these resolutions, the honorable member had confined himself to the use of constitutional language, there would have been a wide and awful

hiatus between his premises and his conclusion. Leaving out the two words compact and accession, which are not constitutional modes of expression, and stating the matter precisely as the truth is, his first resolution would have affirmed that the people of the several States ratified this Constitution, or form of government. These are the very words of South Carolina herself, in her act of ratification. Let, then, his first resolution tell the exact truth; let it state the fact precisely as it exists; let it say that the people of the several States ratified a Constitution, or form of government, and then, sir, what will become of his inference in his second resolution, which is in these words, viz., "that, as in all other cases of compact among sovereign parties, each has an equal right to judge for itself, as well of the infraction as of the mode and measure of redress"? It is obvious, is it not, sir? that this conclusion requires for its support quite other premises; it requires premises which speak of accession and of compact between sovereign powers; and, without such premises, it is altogether unmeaning.

Mr. President, if the honorable member will truly state what the people did in forming this Constitution, and then state what they must do if they would now undo what they then did, he will unavoidably state a case of revolution. Let us see if it be not so. He must state, in the first place, that the people of the several States adopted and ratified this Constitution, or form of government; and, in the next place, he must state that they have a right to undo this; that is to say, that they have a right to discard the form of government which they have adopted, and to break up the Constitution which they have ratified. Now, sir, this is neither more nor less than saying that they have a right to make a revolution. To reject an established

government, to break up a political Constitution, is revolution.

I deny that any man can state accurately what was done by the people, in establishing the present Constitution, and then state accurately what the people, or any part of them, must now do to get rid of its obligations, without stating an undeniable case of the overthrow of government. I admit, of course, that the people may, if they choose, overthrow the government. But, then, that is revolution. The doctrine now contended for is, that, by nullification, or secession, the obligations and authority of the government may be set aside or rejected, without revolution. But that is what I deny; and what I say is, that no man can state the case with historical accuracy, and in constitutional language, without showing that the honorable gentleman's right, as asserted in his conclusion, is a revolutionary right merely; that it does not and cannot exist under the Constitution, or agreeably to the Constitution, but can come into existence only when the Constitution is overthrown. This is the reason, sir, which makes it necessary to abandon the use of constitutional language for a new vocabulary, and to substitute, in the place of plain historical facts, a series of assumptions. This is the reason why it is necessary to give new names to things, to speak of the Constitution, not as a constitution, but as a compact, and of the ratifications by the people, not as ratifications, but as acts of accession.

Sir, I intend to hold the gentleman to the written record. In the discussion of a constitutional question, I intend to impose upon him the restraints of constitutional language. The people have ordained a Constitution; can they reject it without revolution? They have established a form of

government; can they overthrow it without revolution? These are the true questions.

Allow me now, Mr. President, to inquire further into the extent of the propositions contained in the resolutions, and their necessary consequences.

Where sovereign communities are parties, there is no essential difference between a compact, a confederation, and a league. They all equally rest on the plighted faith of the sovereign party. A league, or confederacy, is but a subsisting or continuing treaty.

The gentleman's resolutions, then, affirm, in effect, that these twenty-four United States are held together only by a subsisting treaty, resting for its fulfilment and continuance on no inherent power of its own, but on the plighted faith of each State; or, in other words, that our Union is but a league; and, as a consequence from this proposition, they further affirm that, as sovereigns are subject to no superior power, the States must judge, each for itself, of any alleged violation of the league; and if such violation be supposed to have occurred, such may adopt any mode or measure of redress which it shall think proper.

Other consequences naturally follow, too, from the main proposition. If a league between sovereign powers have no limitation as to the time of its duration, and contain nothing making it perpetual, it subsists only during the good pleasure of the parties, although no violation be complained of. If, in the opinion of either party, it be violated, such party may say that he will no longer fulfil its obligations on his part, but will consider the whole league or compact at an end, although it might be one of its stipulations that it should be perpetual. Upon this principle, the Congress of the United States, in 1798, declared null and void the

treaty of alliance between the United States and France, though it professed to be a perpetual alliance.

If the violation of the league be accompanied with serious injuries, the suffering party, being sole judge of his own mode and measure of redress, has a right to indemnify himself by reprisals on the offending members of the league; and reprisals, if the circumstances of the case require it, may be followed by direct, avowed, and public war.

The necessary import of the resolution, therefore, is, that the United States are connected only by a league; that it is in the good pleasure of every State to decide how long she will choose to remain a member of this league; that any State may determine the extent of her own obligations under it, and accept or reject what shall be decided by the whole; that she may also determine whether her rights have been violated, what is the extent of the injury done her, and what mode and measure of redress her wrongs may make it fit and expedient for her to adopt. The result of the whole is, that any State may secede at pleasure; that any State may resist a law which she herself may choose to say exceeds the power of Congress; and that, as a sovereign power, she may redress her own grievances, by her own arm, at her own discretion. She may make reprisals; she may cruise against the property of other members of the league; she may authorize captures, and make open war.

If, sir, this be our political condition, it is time the people of the United States understood it. Let us look for a moment to the practical consequences of these opinions. One State, holding an embargo law unconstitutional, may declare her opinion, and withdraw from the Union. She secedes. Another, forming and expressing the same judgment on a law laying duties on imports, may withdraw

also. She secedes. And as, in her opinion, money has been taken out of the pockets of her citizens illegally, under pretence of this law, and as she has power to redress their wrongs, she may demand satisfaction; and, if refused, she may take it with a strong hand. The gentleman has himself pronounced the collection of duties, under existing laws, to be nothing but robbery. Robbers, of course, may be rightfully dispossessed of the fruits of their flagitious crimes; and therefore, reprisals, impositions on the commerce of other States, foreign alliances against them, or open war, are all modes of redress justly open to the discretion and choice of South Carolina; for she is to judge of her own rights, and to seek satisfaction for her own wrongs, in her own way.

But, sir, a third State is of opinion, not only that these laws of imposts are constitutional, but that it is the absolute duty of Congress to pass and to maintain such laws; and that, by omitting to pass and maintain them, its constitutional obligations would be grossly disregarded. She herself relinquished the power of protection, she might allege, and allege truly, and gave it up to Congress, on the faith that Congress would exercise it. If Congress now refuse to exercise it, Congress does, as she may insist, break the condition of the grant, and thus manifestly violate the Constitution; and for this violation of the Constitution, she may threaten to secede also. Virginia may secede, and hold the fortresses in the Chesapeake. The Western States may secede, and take to their own use the public lands. Louisiana may secede, if she choose, form a foreign alliance, and hold the mouth of the Mississippi. If one State may secede, ten may do so, twenty may do so, twenty-three may do so. Sir, as these secessions go on, one after another, what is to

constitute the United States? Whose will be the army? Whose the navy? Who will pay the debts? Who fulfil the public treaties? Who perform the constitutional guarantees? Who govern this District and the Territories? Who retain the public property?

Mr. President, every man must see that these are all questions which can arise only after a revolution. They presuppose the breaking up of the government. While the Constitution lasts, they are repressed; they spring up to annoy and startle us only from its grave.

The Constitution does not provide for events which must be preceded by its own destruction. Secession, therefore, since it must bring these consequences with it, is revolutionary, and nullification is equally revolutionary. What is revolution? Why, sir, that is revolution which overturns, or controls, or successfully resists, the existing public authority; that which arrests the exercise of the supreme power; that which introduces a new paramount authority into the rule of the State. Now, sir, this is the precise object of nullification. It attempts to supersede the supreme legislative authority. It arrests the arm of the Executive Magistrate. It interrupts the exercise of the accustomed judicial power. Under the name of an ordinance, it declares null and void, within the State, all the revenue laws of the United States. Is not this revolutionary? Sir, so soon as this ordinance shall be carried into effect, a revolution will have commenced in South Carolina. She will have thrown off the authority to which her citizens have heretofore been subject. She will have declared her own opinions and her own will to be above the laws and above the power of those who are intrusted with their administration. If she makes good these declarations, she is revolu-

tionized. As to her, it is as distinctly a change of the supreme power as the American Revolution of 1776. That revolution did not subvert government in all its forms. It did not subvert local laws and municipal administrations. It only threw off the dominion of a power claiming to be superior, and to have a right, in many important respects, to exercise legislative authority. Thinking this authority to have been usurped or abused, the American Colonies, now the United States, bade it defiance, and freed themselves from it by means of a revolution. But that revolution left them with their own municipal laws still, and the forms of local government. If Carolina now shall effectually resist the laws of Congress; if she shall be her own judge, take her remedy into her own hands, obey the laws of the Union when she pleases and disobey them when she pleases, she will relieve herself from a paramount power as distinctly as the American Colonies did the same thing in 1776. In other words, she will achieve, as to herself, a revolution.

But, sir, while practical nullification in South Carolina would be, as to herself, actual and distinct revolution, its necessary tendency must also be to spread revolution, and to break up the Constitution, as to all the other States. It strikes a deadly blow at the vital principle of the whole Union. To allow State resistance to the laws of Congress to be rightful and proper, to admit nullification in some States, and yet not expect to see a dismemberment of the entire government, appears to me the wildest illusion, and the most extravagant folly. The gentleman seems not conscious of the direction or the rapidity of his own course. The current of his opinions sweeps him along, he knows not whither. To begin with nullification, with the avowed intent, nevertheless, not to proceed to secession, dismember-

ment, and general revolution, is as if one were to take the plunge of Niagara, and cry out that he would stop half-way down. In the one case, as in the other, the rash adventurer must go to the bottom of the dark abyss below, were it not that that abyss has no discovered bottom.

Nullification, if successful, arrests the power of the law, absolves citizens from their duty, subverts the foundation both of protection and obedience, dispenses with oaths and obligations of allegiance, and elevates another authority to supreme command. Is not this revolution? And it raises to supreme command four-and-twenty distinct powers, each professing to be under a general government, and yet each setting its laws at defiance at pleasure. Is not this anarchy, as well as revolution? Sir, the Constitution of the United States was received as a whole, and for the whole country. If it cannot stand altogether, it cannot stand in parts; and if the laws cannot be executed everywhere, they cannot long be executed anywhere. The gentleman very well knows that all duties and imposts must be uniform throughout the country. He knows that we cannot have one rule or one law for South Carolina, and another for other States. He must see, therefore, and does see, and every man sees, that the only alternative is a repeal of the laws throughout the whole Union, or their execution in Carolina as well as elsewhere. And this repeal is demanded because a single State interposes her veto, and threatens resistance! The result of the gentleman's opinion, or rather the very text of his doctrine, is, that no act of Congress can bind all the States, the constitutionality of which is not admitted by all; or, in other words, that no single State is bound, against its own dissent, by a law of imposts. This is precisely the evil experienced under the old Confederation,

and for remedy of which this Constitution was adopted. The leading object in establishing this government, an object forced on the country by the condition of the times and the absolute necessity of the law, was to give to Congress power to lay and collect imposts without the consent of particular States. The Revolutionary debt remained unpaid; the national treasury was bankrupt; the country was destitute of credit; Congress issued its requisitions on the States, and the States neglected them; there was no power of coercion but war, Congress could not lay imposts, or other taxes, by its own authority; the whole general government, therefore, was little more than a name. The Articles of Confederation, as to purposes of revenue and finance, were nearly a dead letter. The country sought to escape from this condition, at once feeble and disgraceful, by constituting a government which should have power, of itself, to lay duties and taxes, and to pay the public debt, and provide for the general welfare; and to lay these duties and taxes in all the States, without asking the consent of the State governments. This was the very power on which the new Constitution was to depend for all its ability to do good; and without it, it can be no government, now or at any time. Yet, sir, it is precisely against this power, so absolutely indispensable to the very being of the government, that South Carolina directs her ordinance. She attacks the government in its authority to raise revenue, the very mainspring of the whole system; and if she succeed, every movement of that system must inevitably cease. It is of no avail that she declares that she does not resist the law as a revenue law, but as a law for protecting manufactures. It is a revenue law; it is the very law by force of which the revenue is collected; if it be

arrested in any State, the revenue ceases in that State; it is, in a word, the sole reliance of the government for the means of maintaining itself and performing its duties.

Mr. President, the alleged right of a State to decide constitutional questions for herself necessarily leads to force, because other States must have the same right, and because different States will decide differently; and when these questions arise between States, if there be no superior power, they can be decided only by the law of force. On entering into the Union, the people of each State gave up a part of their own power to make laws for themselves, in consideration, that, as to common objects, they should have a part in making laws for other States. In other words, the people of all the States agreed to create a common government, to be conducted by common counsels. Pennsylvania, for example, yielded the right of laying imposts in her own ports, in consideration that the new government, in which she was to have a share, should possess the power of laying imposts on all the States. If South Carolina now refuses to submit to this power, she breaks the condition on which other States entered into the Union. She partakes of the common counsels, and therein assists to bind others, while she refuses to be bound herself. It makes no difference in the case, whether she does all this without reason or pretext, or whether she sets up as a reason that, in her judgment, the acts complained of are unconstitutional. In the judgment of other States, they are not so. It is nothing to them that she offers some reason or some apology for her conduct, if it be one which they do not admit. It is not to be expected that any State will violate her duty without some plausible pretext. That would be too rash a defiance of the opinion of mankind. But if it be a pretext which

lies in her own breast, if it be no more than an opinion which she says she has formed, how can other States be satisfied with this? How can they allow her to be judge of her own obligations? Or, if she may judge of her obligations, may they not judge of their rights also? May not the twenty-three entertain an opinion as well as the twenty-fourth? And if it be their right, in their own opinion, as expressed in the common council, to enforce the law against her, how is she to say that her right and her opinion are to be everything, and their right and their opinion nothing?

Mr. President, if we are to receive the Constitution as the text, and then to lay down in its margin the contradictory commentaries which have been, and which may be, made by different States, the whole page would be a polyglot indeed. It would speak with as many tongues as the builders of Babel, and in dialects as much confused, and mutually as unintelligible. The very instance now before us presents a practical illustration. The law of the last session is declared unconstitutional in South Carolina, and obedience to it is refused. In other States, it is admitted to be strictly constitutional. You walk over the limit of its authority, therefore, when you pass a State line. On one side it is law, on the other side a nullity; and yet it is passed by a common government, having the same authority in all the States.

Such, sir, are the inevitable results of this doctrine. Beginning with the original error, that the Constitution of the United States is nothing but a compact between sovereign States; asserting, in the next step, that each State has a right to be its own sole judge of the extent of its own obligations, and consequently of the constitutionality of laws of Congress; and, in the next, that it may oppose

whatever it sees fit to declare unconstitutional, and that it decides for itself on the mode and measure of redress—the argument arrives at once at the conclusion, that what a State dissents from, it may nullify; what it opposes, it may oppose by force; what it decides for itself, it may execute by its own power; and that, in short, it is itself supreme over the legislation of Congress, and supreme over the decisions of the national judicature; supreme over the Constitution of the country, supreme over the supreme law of the land. However it seeks to protect itself against these plain inferences, by saying that an unconstitutional law is no law, and that it only opposes such laws as are unconstitutional, yet this does not in the slightest degree vary the result; since it insists on deciding this question for itself; and, in opposition to reason and argument, in opposition to practice and experience, in opposition to the judgment of others, having an equal right to judge, it says, only, "Such is my opinion, and my opinion shall be my law, and I will support it by my own strong hand. I denounce the law; I declare it unconstitutional; that is enough; it shall not be executed. Men in arms are ready to resist its execution. An attempt to enforce it shall cover the land with blood. Elsewhere it may be binding; but here it is trampled underfoot."

This, sir, is practical nullification.

And now, sir, against all these theories and opinions, I maintain—

1. That the Constitution of the United States is not a league, confederacy, or compact between the people of the several States in their sovereign capacities; but a government proper, founded on the adoption of the people, and creating direct relations between itself and individuals.

2. That no State authority has power to dissolve these relations; that nothing can dissolve them but revolution; and that, consequently, there can be no such thing as secession without revolution.

3. That there is a supreme law, consisting of the Constitution of the United States, and acts of Congress passed in pursuance of it, and treaties; and that, in cases not capable of assuming the character of a suit in law or equity, Congress must judge of, and finally interpret, this supreme law so often as it has occasion to pass acts of legislation; and in cases capable of assuming, and actually assuming, the character of a suit, the Supreme Court of the United States is the final interpreter.

4. That an attempt by a State to abrogate, annul, or nullify an act of Congress, or to arrest its operation within her limits, on the ground that, in her opinion, such law is unconstitutional, is a direct usurpation on the just powers of the general government, and on the equal rights of other States; a plain violation of the Constitution, and a proceeding essentially revolutionary in its character and tendency.

Whether the Constitution be a compact between States in their sovereign capacities, is a question which must be mainly argued from what is contained in the instrument itself. We all agree that it is an instrument which has been in some way clothed with power. We all admit that it speaks with authority. The first question then is, What does it say of itself? What does it purport to be? Does it style itself a league, confederacy, or compact between sovereign States? It is to be remembered, sir, that the Constitution began to speak only after its adoption. Until it was ratified by nine States, it was but a proposal, the

mere draught of an instrument. It was like a deed drawn, but not executed. The Convention had framed it; sent it to Congress, then sitting under the Confederation; Congress had transmitted it to the State Legislatures; and by these last it was laid before conventions of the people in the several States. All this while it was inoperative paper. It had received no stamp of authority, no sanction; it spoke no language. But when ratified by the people in their respective conventions, then it had a voice, and spoke authentically. Every word in it had then received the sanction of the popular will, and was to be received as the expression of that will. What the Constitution says of itself, therefore, is as conclusive as what it says on any other point. Does it call itself a "compact"? Certainly not. It uses the word compact but once, and that is when it declares that the States shall enter into no compact. Does it call itself a "league," a "confederacy," a "subsisting treaty between the States"? Certainly not. There is not a particle of such language in all its pages. But it declares itself a Constitution. What is a Constitution? Certainly not a league, compact, or confederacy, but a fundamental law. That fundamental regulation which determines the manner in which the public authority is to be executed, is what forms the Constitution of a State. Those primary rules which concern the body itself, and the very being of the political society, the form of government, and the manner in which power is to be exercised—all, in a word, which form together the Constitution of a State—these are the fundamental laws. This, sir, is the language of the public writers. But do we need to be informed, in this country, what a Constitution is? Is it not an idea perfectly familiar, definite, and well settled? We are at no loss to understand

what is meant by the Constitution of one of the States; and the Constitution of the United States speaks of itself as being an instrument of the same nature. It says this Constitution shall be the law of the land, anything in any State Constitution to the contrary notwithstanding. And it speaks of itself, too, in plain contradistinction from a confederation; for it says that all debts contracted, and all engagements entered into, by the United States, shall be as valid under this Constitution as under the Confederation. It does not say, as valid under this compact, or this league, or this confederation, as under the former confederation, but as valid under this Constitution.

This, then, sir, is declared to be a Constitution. A Constitution is the fundamental law of the State; and this is expressly declared to be the supreme law. It is as if the people had said, "We prescribe this fundamental law," or "this supreme law," for they do say that they establish this Constitution, and that it shall be the supreme law. They say that they ordain and establish it. Now, sir, what is the common application of these words? We do not speak of ordaining leagues and compacts. If this was intended to be a compact or league, and the States to be parties to it, why was it not so said? Why is there found no one expression in the whole instrument indicating such intent? The old Confederation was expressly called a league, and into this league it was declared that the States, as States, severally entered. Why was not similar language used in the Constitution, if a similar intention had existed? Why was it not said, "the States enter into this new league," "the States form this new confederation," or "the States agree to this new compact"? Or why was it not said, in the language of the gentleman's resolution, that the people of the

several States acceded to this compact in their sovereign capacities? What reason is there for supposing that the framers of the Constitution rejected expressions appropriate to their own meaning, and adopted others wholly at war with that meaning?

Again, sir, the Constitution speaks of that political system which is established as "the government of the United States." Is it not doing strange violence to language to call a league or a compact between sovereign powers a government? The government of a State is that organization in which the political power resides. It is the political being created by the Constitution or fundamental law. The broad and clear difference between a government and a league or compact is, that a government is a body politic; it has a will of its own; and it possesses powers and faculties to execute its own purposes. Every compact looks to some power to enforce its stipulations. Even in a compact between sovereign communities, there always exists this ultimate reference to a power to insure its execution; although, in such case, this power is but the force of one party against the force of another; that is to say, the power of war. But a government executes its decisions by its own supreme authority. Its use of force in compelling obedience to its own enactments is not a war. It contemplates no opposing party having a right of resistance. It rests on its own power to enforce its own will; and when it ceases to possess this power, it is no longer a government.

Mr. President, I concur so generally in the very able speech of the gentleman from Virginia near me [Mr. Rives], that it is not without diffidence and regret that I venture to differ with him on any point. His opinions, sir, are redolent of the doctrines of a very distinguished school, for

which I have the highest regard, of whose doctrines I can say, what I can also say of the gentleman's speech, that, while I concur in the results, I must be permitted to hesitate about some of the premises. I do not agree that the Constitution is a compact between States in their sovereign capacities. I do not agree, that, in strictness of language, it is a compact at all. But I do agree that it is founded on consent or agreement, or on compact, if the gentleman prefers that word, and means no more by it than voluntary consent or agreement. The Constitution, sir, is not a contract, but the result of a contract; meaning by contract no more than assent. Founded on consent, it is a government proper. Adopted by the agreement of the people of the United States, when adopted, it has become a Constitution. The people have agreed to make a Constitution; but when made, that Constitution becomes what its name imports. It is no longer a mere agreement. Our laws, sir, have their foundation in the agreement or consent of the two Houses of Congress. We say, habitually, that one House proposes a bill, and the other agrees to it; but the result of this agreement is not a compact, but a law. The law, the statute, is not the agreement, but something created by the agreement; and something which, when created, has a new character, and acts by its own authority. So the Constitution of the United States, founded in or on the consent of the people, may be said to rest on compact or consent; but it is not itself the compact, but its result. When the people agree to erect a government, and actually erect it, the thing is done, and the agreement is at an end. The compact is executed, and the end designed by it attained. Henceforth, the fruit of the agreement exists, but the agreement itself is merged in its own accomplishment;

since there can be no longer a subsisting agreement or compact to form a Constitution or government, after that Constitution or government has been actually formed and established.

It appears to me, Mr. President, that the plainest account of the establishment of this government presents the most just and philosophical view of its foundation. The people of the several States had their separate State governments; and between the States there also existed a Confederation. With this condition of things the people were not satisfied, as the Confederation had been found not to fulfil its intended objects. It was proposed, therefore, to erect a new, common government, which should possess certain definite powers, such as regarded the prosperity of the people of all the States, and to be formed upon the general model of American constitutions. This proposal was assented to, and an instrument was presented to the people of the several States for their consideration They approved it, and agreed to adopt it, as a Constitution. They executed that agreement; they adopted the Constitution as a Constitution, and henceforth it must stand as a Constitution until it shall be altogether destroyed. Now, sir, is not this the truth of the whole matter? And is not all that we have heard of compact between sovereign States the mere effect of a theoretical and artificial mode of reasoning upon the subject? a mode of reasoning which disregards plain facts for the sake of hypothesis?

Mr. President, the nature of sovereignty or sovereign power has been extensively discussed by gentlemen on this occasion, as it generally is when the origin of our government is debated. But I confess myself not entirely satisfied with arguments and illustrations drawn from that topic. The sovereignty of government is an idea belonging

to the other side of the Atlantic. No such thing is known in North America. Our governments are all limited. In Europe, sovereignty is of feudal origin, and imports no more than the state of the sovereign. It comprises his rights, duties, exemptions, prerogatives, and powers. But with us, all power is with the people. They alone are sovereign; and they erect what governments they please, and confer on them such powers as they please. None of these governments is sovereign, in the European sense of the word, all being restrained by written constitutions. It seems to me, therefore, that we only perplex ourselves when we attempt to explain the relations existing between the general government and the several State governments, according to those ideas of sovereignty which prevail under systems essentially different from our own.

But, sir, to return to the Constitution itself; let me inquire what it relies upon for its own continuance and support. I hear it often suggested, that the States, by refusing to appoint Senators and Electors, might bring this government to an end. Perhaps that is true; but the same may be said of the State governments themselves. Suppose the Legislature of a State, having the power to appoint the governor and the judges, should omit that duty, would not the State government remain unorganized? No doubt, all elective governments may be broken up by a general abandonment, on the part of those intrusted with political powers, of their appropriate duties. But one popular government has, in this respect, as much security as another. The maintenance of this Constitution does not depend on the plighted faith of the States, as States, to support it; and this again shows that it is not a league. It relies on individual duty and obligation.

The Constitution of the United States creates direct relations between this government and individuals. This government may punish individuals for treason, and all other crimes in the code, when committed against the United States. It has power, also, to tax individuals, in any mode, and to any extent; and it possesses the further power of demanding from individuals military service. Nothing, certainly, can more clearly distinguish a government from a confederation of States than the possession of these powers. No closer relations can exist between individuals and any government.

On the other hand, the government owes high and solemn duties to every citizen of the country. It is bound to protect him in his most important rights and interests. It makes war for his protection, and no other government in the country can make war. It makes peace for his protection, and no other government can make peace. It maintains armies and navies for his defence and security, and no other government is allowed to maintain them. He goes abroad beneath its flag, and carries over all the earth a national character imparted to him by this government, and which no other government can impart. In whatever relates to war, to peace, to commerce, he knows no other government. All these, sir, are connections as dear and as sacred as can bind individuals to any government on earth. It is not, therefore, a compact between States, but a government proper, operating directly upon individuals, yielding to them protection on the one hand, and demanding from them obedience on the other.

There is no language in the whole Constitution applicable to a confederation of States. If the States be parties, as States, what are their rights, and what their respective

covenants and stipulations? And where are their rights, covenants, and stipulations expressed? The States engage for nothing, they promise nothing. In the Articles of Confederation, they did make promises, and did enter into engagements, and did plight the faith of each State for their fulfilment; but in the Constitution there is nothing of that kind. The reason is, that, in the Constitution, it is the people who speak, and not the States. The people ordain the Constitution, and therein address themselves to the States, and to the Legislatures of the States, in the language of injunction and prohibition. The Constitution utters its behests in the name and by authority of the people, and it does not exact from States any plighted public faith to maintain it. On the contrary, it makes its own preservation depend on individual duty and individual obligation. Sir, the States cannot omit to appoint Senators and Electors. It is not a matter resting in State discretion or State pleasure. The Constitution has taken better care of its own preservation. It lays its hand on individual conscience and individual duty. It incapacitates any man to sit in the Legislature of a State who shall not first have taken his solemn oath to support the Constitution of the United States. From the obligation of this oath, no State power can discharge him. All the members of all the State Legislatures are as religiously bound to support the Constitution of the United States as they are to support their own State Constitution. Nay, sir, they are as solemnly sworn to support it as we ourselves are, who are members of Congress.

No member of a State Legislature can refuse to proceed, at the proper time, to elect Senators to Congress, or to provide for the choice of Electors of President and Vice-President, any more than the members of this Senate can refuse,

when the appointed day arrives, to meet the members of the other House, to count the votes for those officers, and ascertain who are chosen. In both cases, the duty binds, and with equal strength, the conscience of the individual member, and it is imposed on all by an oath in the same words. Let it then never be said, sir, that it is a matter of discretion with the States whether they will continue the government, or break it up by refusing to appoint Senators and to elect Electors. They have no discretion in the matter. The members of their Legislatures cannot avoid doing either, so often as the time arrives, without a direct violation of their duty and their oaths; such a violation as would break up any other government.

Looking still further to the provisions of the Constitution itself, in order to learn its true character, we find its great apparent purpose to be, to unite the people of all the States under one general government, for certain definite objects, and, to the extent of this union, to restrain the separate authority of the States. Congress only can declare war; therefore, when one State is at war with a foreign nation, all must be at war. The President and the Senate only can make peace; when peace is made for one State, therefore, it must be made for all.

Can anything be conceived more preposterous, than that any State should have power to nullify the proceedings of the general government respecting peace and war? When war is declared by a law of Congress, can a single State nullify that law, and remain at peace? And yet she may nullify that law as well as any other. If the President and Senate make peace, may one State, nevertheless, continue the war? And yet, if she can nullify a law, she may quite as well nullify a treaty.

The truth is, Mr. President, and no ingenuity of argument, no subtlety of distinction can evade it, that, as to certain purposes, the people of the United States are one people. They are one in making war, and one in making peace; they are one in regulating commerce, and one in laying duties of imposts. The very end and purpose of the Constitution was, to make them one people in these particulars; and it has effectually accomplished its object. All this is apparent on the face of the Constitution itself. I have already said, sir, that to obtain a power of direct legislation over the people, especially in regard to imposts, was always prominent as a reason for getting rid of the Confederation, and forming a new Constitution. Among innumerable proofs of this, before the assembling of the Convention, allow me to refer only to the report of the committee of the old Congress, July, 1785.

But, sir, let us go to the actual formation of the Constitution; let us open the journal of the Convention itself, and we shall see that the very first resolution which the Convention adopted was, "That a national government ought to be established, consisting of a supreme legislature, judiciary, and executive."

This itself completely negatives all idea of league, and compact, and confederation. Terms could not be chosen more fit to express an intention to establish a national government, and to banish forever all notion of a compact between sovereign States.

This resolution was adopted on the 30th of May, 1787. Afterward the style was altered, and, instead of being called a national government, it was called the government of the United States; but the substance of this resolution was retained, and was at the head of that list of resolutions which

was afterward sent to the committee who were to frame the instrument.

It is true, there were gentlemen in the Convention, who were for retaining the Confederation, and amending its Articles; but the majority was against this, and was for a national government. Mr. Patterson's propositions, which were for continuing the Articles of Confederation with additional powers, were submitted to the Convention on the 15th of June, and referred to the committee of the whole. The resolutions forming the basis of a national government, which had once been agreed to in the committee of the whole, and reported, were recommitted to the same committee, on the same day. The Convention, then, in committee of the whole, on the 19th of June, had both these plans before them; that is to say, the plan of a confederacy, or compact, between States, and the plan of a national government. Both these plans were considered and debated, and the committee reported, "That they do not agree to the propositions offered by the honorable Mr. Patterson, but that they again submit the resolutions formerly reported." If, sir, any historical fact in the world be plain and undeniable, it is that the Convention deliberated on the expediency of continuing the Confederation, with some amendments, and rejected that scheme, and adopted the plan of a national government, with a legislature, an executive, and a judiciary of its own. They were asked to preserve the league; they rejected the proposition. They were asked to continue the existing compact between States; they rejected it. They rejected compact, league, and confederation, and set themselves about framing the Constitution of a national government; and they accomplished what they undertook.

If men will open their eyes fairly to the lights of history, it is impossible to be deceived on this point. The great object was to supersede the Confederation by a regular government; because, under the Confederation, Congress had power only to make requisitions on States; and if States declined compliance, as they did, there was no remedy but war against such delinquent States. It would seem, from Mr. Jefferson's correspondence, in 1786 and 1787, that he was of opinion that even this remedy ought to be tried. "There will be no money in the treasury," said he, "till the Confederacy shows its teeth"; and he suggests that a single frigate would soon levy, on the commerce of a delinquent State, the deficiency of its contribution. But this would be war; and it was evident that a confederacy could not long hold together which should be at war with its members. The Constitution was adopted to avoid this necessity. It was adopted that there might be a government which should act directly on individuals, without borrowing aid from the State governments. This is clear as light itself on the very face of the provisions of the Constitution, and its whole history tends to the same conclusion. Its framers gave this very reason for their work in the most distinct terms. Allow me to quote but one or two proofs, out of hundreds. That State, so small in territory, but so distinguished for learning and talent, Connecticut, had sent to the general Convention, among other members, Samuel Johnston and Oliver Ellsworth. The Constitution having been framed, it was submitted to a convention of the people of Connecticut for ratification on the part of that State; and Mr. Johnston and Mr. Ellsworth were also members of this convention. On the first day of the debates, being called on to explain the reasons which led

the Convention at Philadelphia to recommend such a Constitution, after showing the insufficiency of the existing confederacy, inasmuch as it applied to States, as States, Mr. Johnston proceeded to say:

"The Convention saw this imperfection in attempting to legislate for States in their political capacity, that the coercion of law can be exercised by nothing but a military force. They have, therefore, gone upon entirely new ground. They have formed one new nation out of the individual States. The Constitution vests in the general Legislature a power to make laws in matters of national concern; to appoint judges to decide upon these laws; and to appoint officers to carry them into execution. This excludes the idea of an armed force. The power which is to enforce these laws is to be a legal power, vested in proper magistrates. The force which is to be employed is the energy of law; and this force is to operate only upon individuals who fail in their duty to their country. This is the peculiar glory of the Constitution, that it depends upon the mild and equal energy of the magistracy for the execution of the laws."

In the further course of the debate, Mr. Ellsworth said:

"In republics, it is a fundamental principle, that the majority govern, and that the minority comply with the general voice. How contrary, then, to republican principles, how humiliating, is our present situation! A single State can rise up, and put a veto upon the most important public measures. We have seen this actually take place; a single State has controlled the general voice of the Union; a minority, a very small minority, has governed us. So far is this from being consistent with republican principles, that it is, in effect, the worst species of monarchy.

"Hence we see how necessary for the Union is a coercive principle. No man pretends the contrary. We all see and feel this necessity. The only question is, Shall it be a co-

ercion of law, or a coercion of arms? There is no other possible alternative. Where will those who oppose a coercion of law come out? Where will they end? A necessary consequence of their principles is a war of the States one against another. I am for coercion by law; that coercion which acts only upon delinquent individuals. This Constitution does not attempt to coerce sovereign bodies, States, in their political capacity. No coercion is applicable to such bodies, but that of an armed force. If we should attempt to execute the laws of the Union by sending an armed force against a delinquent State, it would involve the good and bad, the innocent and guilty, in the same calamity. But this legal coercion singles out the guilty individual, and punishes him for breaking the laws of the Union."

Indeed, sir, if we look to all contemporary history, to the numbers of the "Federalist," to the debates in the conventions, to the publications of friends and foes, they all agree, that a change had been made from a Confederacy of States to a different system; they all agree, that the Convention had formed a Constitution for a national government. With this result some were satisfied, and some were dissatisfied; but all admitted that the thing had been done. In none of these various productions and publications did any one intimate that the new Constitution was but another compact between States in their sovereign capacities. I do not find such an opinion advanced in a single instance. Everywhere the people were told that the old Confederation was to be abandoned and a new system to be tried; that a proper government was proposed, to be founded in the name of the people, and to have a regular organization of its own. Everywhere the people were told that it was to be a government with direct powers to make laws over individuals, and to lay taxes and imposts without the consent of

the States. Everywhere it was understood to be a popular Constitution. It came to the people for their adoption, and was to rest on the same deep foundation as the State constitutions themselves. Its most distinguished advocates, who had been themselves members of the Convention, declared that the very object of submitting the Constitution to the people was, to preclude the possibility of its being regarded as a mere compact. "However gross a heresy," say the writers of the "Federalist," "it may be to maintain that a party to a compact has a right to revoke that compact, the doctrine itself has had respectable advocates. The possibility of a question of this nature proves the necessity of laying the foundations of our national government deeper than in the mere sanction of delegated authority. The fabric of American empire ought to rest on the solid basis of the consent of the people."

Such is the language, sir, addressed to the people, while they yet had the Constitution under consideration. The powers conferred on the new government were perfectly well understood to be conferred, not by any State, or the people of any State, but by the people of the United States. Virginia is more explicit, perhaps, in this particular, than any other State. Her convention, assembled to ratify the Constitution, "in the name and behalf of the people of Virginia, declare and make known, that the powers granted under the Constitution, being derived from the people of the United States, may be resumed by them whenever the same shall be perverted to their injury or oppression."

Is this language which describes the formation of a compact between States? or language describing the grant of powers to a new government, by the whole people of the United States?

Among all the other ratifications, there is not one which speaks of the Constitution as a compact between States. Those of Massachusetts and New Hampshire express the transaction, in my opinion, with sufficient accuracy. They recognize the Divine goodness "in affording the people of the United States an opportunity of entering into an explicit and solemn compact with each other, by assenting to and ratifying a new Constitution." You will observe, sir, that it is the people, and not the States, who have entered into this compact; and it is the people of all the United States. These conventions, by this form of expression, meant merely to say, that the people of the United States had, by the blessing of Providence, enjoyed the opportunity of establishing a new Constitution, founded in the consent of the people. This consent of the people has been called, by European writers, the social compact; and, in conformity to this common mode of expression, these conventions speak of that assent, on which the new Constitution was to rest, as an explicit and solemn compact, not which the States had entered into with each other, but which the people of the United States had entered into.

Finally, sir, how can any man get over the words of the Constitution itself?—"We, the people of the United States, do ordain and establish this Constitution." These words must cease to be a part of the Constitution, they must be obliterated from the parchment on which they are written, before any human ingenuity or human argument can remove the popular basis on which that Constitution rests, and turn the instrument into a mere compact between sovereign States.

The second proposition, sir, which I propose to maintain, is, that no State authority can dissolve the relations subsist-

ing between the government of the United States and individuals; that nothing can dissolve these relations but revolution; and that, therefore, there can be no such thing as secession without revolution. All this follows, as it seems to me, as a just consequence, if it be first proved that the Constitution of the United States is a government proper, owing protection to individuals, and entitled to their obedience.

The people, sir, in every State, live under two governments. They owe obedience to both. These governments, though distinct, are not adverse. Each has its separate sphere, and its peculiar powers and duties. It is not a contest between two sovereigns for the same power, like the wars of the rival houses in England; nor is it a dispute between a government *de facto* and a government *de jure*. It is the case of a division of powers between two governments, made by the people, to whom both are responsible. Neither can dispense with the duty which individuals owe to the other; neither can call itself master of the other; the people are masters of both. This division of power, it is true, is in a great measure unknown in Europe. It is the peculiar system of America; and, though new and singular, it is not incomprehensible. The State Constitutions are established by the people of the States. This Constitution is established by the people of all the States. How, then, can a State secede? How can a State undo what the whole people have done? How can she absolve her citizens from their obedience to the laws of the United States? How can she annul their obligations and oaths? How can the members of her Legislature renounce their own oaths? Sir, secession, as a revolutionary right, is intelligible; as a right to be proclaimed in the midst of civil

commotions, and asserted at the head of armies, I can understand it. But as a practical right, existing under the Constitution, and in conformity with its provisions, it seems to me to be nothing but a plain absurdity; for it supposes resistance to government, under the authority of government itself; it supposes dismemberment, without violating the principles of union; it supposes opposition to law, without crime; it supposes the violation of oaths, without responsibility; it supposes the total overthrow of government, without revolution.

The Constitution, sir, regards itself as perpetual and immortal. It seeks to establish a union among the people of the States, which shall last through all time. Or, if the common fate of things human must be expected at some period to happen to it, yet that catastrophe is not anticipated.

The instrument contains ample provisions for its amendment, at all times; none for its abandonment, at any time. It declares that new States may come into the Union, but it does not declare that old States may go out. The Union is not a temporary partnership of States. It is the association of the people, under a constitution of government, uniting their power, joining together their highest interests, cementing their present enjoyments, and blending, in one indivisible mass, all their hopes for the future. Whatsoever is steadfast in just political principles; whatsoever is permanent in the structure of human society; whatsoever there is which can derive an enduring character from being founded on deep-laid principles of constitutional liberty and on the broad foundations of the public will—all these unite to entitle this instrument to be regarded as a permanent constitution of government.

In the next place, Mr. President, I contend that there is a supreme law of the land, consisting of the Constitution, acts of Congress passed in pursuance of it, and the public treaties. This will not be denied, because such are the very words of the Constitution. But I contend, further, that it rightfully belongs to Congress, and to the courts of the United States, to settle the construction of this supreme law, in doubtful cases. This is denied; and here arises the great practical question: Who is to construe finally the Constitution of the United States? We all agree that the Constitution is the supreme law; but who shall interpret that law? In our system of the division of powers between different governments, controversies will necessarily sometimes arise, respecting the extent of the powers of each. Who shall decide these controversies? Does it rest with the general government, in all or any of its departments, to exercise the office of final interpreter? Or may each of the States, as well as the general government, claim this right of ultimate decision? The practical result of this whole debate turns on this point. The gentleman contends that each State may judge for itself of any alleged violation of the Constitution, and may finally decide for itself, and may execute its own decisions by its own power. All the recent proceedings in South Carolina are founded on this claim of right. Her convention has pronounced the revenue laws of the United States unconstitutional; and this decision she does not allow any authority of the United States to overrule or reverse. Of course she rejects the authority of Congress, because the very object of the ordinance is to reverse the decision of Congress; and she rejects, too, the authority of the courts of the United States, because she expressly prohibits all appeal to those courts. It is in order

to sustain this asserted right of being her own judge, that she pronounces the Constitution of the United States to be but a compact, to which she is a party, and a sovereign party. If this be established, then the inference is supposed to follow, that, being sovereign, there is no power to control her decision; and her own judgment on her own compact is and must be conclusive.

I have already endeavored, sir, to point out the practical consequences of this doctrine, and to show how utterly inconsistent it is with all ideas of regular government, and how soon its adoption would involve the whole country in revolution and absolute anarchy. I hope it is easy now to show, sir, that a doctrine bringing such consequences with it is not well founded; that it has nothing to stand on but theory and assumption; and that it is refuted by plain and express constitutional provisions. I think the government of the United States does possess, in its appropriate departments, the authority of final decision on questions of disputed power. I think it possesses this authority, both by necessary implication and by express grant.

It will not be denied, sir, that this authority naturally belongs to all governments. They all exercise it from necessity, and as a consequence of the exercise of other powers. The State governments themselves possess it except in that class of questions which may arise between them and the general government, and in regard to which they have surrendered it, as well by the nature of the case as by clear constitutional provisions. In other and ordinary cases, whether a particular law be in conformity to the Constitution of the State is a question which the State Legislature or the State Judiciary must determine. We all know that these questions arise daily in the State govern-

ments, and are decided by those governments; and I know no government which does not exercise a similar power.

Upon general principles, then, the government of the United States possesses this authority; and this would hardly be denied were it not that there are other governments. But since there are State governments, and since these, like other governments, ordinarily construe their own powers, if the government of the United States construes its own powers also, which construction is to prevail in the case of opposite constructions? And again, as in the case now actually before us, the State governments may undertake, not only to construe their own powers, but to decide directly on the extent of the powers of Congress. Congress has passed a law as being within its just powers; South Carolina denies that this law is within its just powers, and insists that she has the right so to decide this point, and that her decision is final. How are these questions to be settled?

In my opinion, sir, even if the Constitution of the United States had made no express provision for such cases, it would yet be difficult to maintain that in a Constitution existing over four-and-twenty States, with equal authority over all, one could claim a right of construing it for the whole. This would seem a manifest impropriety; indeed, an absurdity. If the Constitution is a government existing over all the States, though with limited powers, it necessarily follows, that, to the extent of those powers, it must be supreme. If it be not superior to the authority of a particular State, it is not a national government. But as it is a government, as it has a legislative power of its own, and a judicial power co-extensive with the legislative, the inference is irresistible that this government, thus created

by the whole and for the whole, must have an authority superior to that of the particular government of any one part. Congress is the legislature of all the people of the United States; the judiciary of the general government is the judiciary of all the people of the United States. To hold, therefore, that this Legislature and this judiciary are subordinate in authority to the Legislature and judiciary of a single State, is doing violence to all common-sense, and overturning all established principles. Congress must judge of the extent of its own powers so often as it is called on to exercise them, or it cannot act at all; and it must also act independent of State control, or it cannot act at all.

The right of State interposition strikes at the very foundation of the legislative power of Congress. It possesses no effective legislative power, if such right of State interposition exists; because it can pass no law not subject to abrogation. It cannot make laws for the Union, if any part of the Union may pronounce its enactments void and of no effect. Its forms of legislation would be an idle ceremony, if, after all, any one of four-and-twenty States might bid defiance to its authority. Without express provision in the Constitution, therefore, sir, this whole question is necessarily decided by those provisions which create a legislative power and a judicial power. If these exist in a government intended for the whole, the inevitable consequence is, that the laws of this legislative power and the decisions of this judicial power must be binding on and over the whole. No man can form the conception of a government existing over four-and-twenty States, with a regular legislative and judicial power, and of the existence at the same time of an authority, residing elsewhere, to resist, at pleasure or discretion, the enactments and the decisions of such a government.

I maintain, therefore, sir, that, from the nature of the case, and as an inference wholly unavoidable, the acts of Congress and the decisions of the national courts must be of higher authority than State laws and State decisions. If this be not so, there is, there can be, no general government.

But, Mr. President, the Constitution has not left this cardinal point without full and explicit provisions. First, as to the authority of Congress. Having enumerated the specific powers conferred on Congress, the Constitution adds, as a distinct and substantive clause, the following, viz.: "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution, in the government of the United States, or in any department or officer thereof." If this means anything, it means that Congress may judge of the true extent and just interpretation of the specific powers granted to it, and may judge also of what is necessary and proper for executing those powers. If Congress is to judge of what is necessary for the execution of its powers, it must, of necessity, judge of the extent and interpretation of those powers.

And in regard, sir, to the judiciary, the Constitution is still more express and emphatic. It declares that the judicial power shall extend to all cases in law or equity arising under the Constitution, laws of the United States, and treaties; that there shall be one Supreme Court, and that this Supreme Court shall have appellate jurisdiction of all these cases, subject to such exceptions as Congress may make. It is impossible to escape from the generality of these words. If a case arises under the Constitution, that is, if a case arises depending on the construction of the Constitution, the judicial power of the United States ex-

tends to it. It reaches the case, the question; it attaches the power of the national judicature to the case itself, in whatever court it may arise or exist; and in this case the Supreme Court has appellate jurisdiction over all courts whatever. No language could provide with more effect and precision than is here done, for subjecting constitutional questions to the ultimate decision of the Supreme Court. And, sir, this is exactly what the convention found it necessary to provide for, and intended to provide for. It is, too, exactly what the people were universally told was done when they adopted the Constitution. One of the first resolutions adopted by the Convention was in these words, viz.: "That the jurisdiction of the national judiciary shall extend to cases which respect the collection of the national revenue, and questions which involve the national peace and harmony." Now, sir, this either had no sensible meaning at all, or else it meant that the jurisdiction of the national judiciary should extend to these questions, with a paramount authority. It is not to be supposed that the Convention intended that the power of the national judiciary should extend to these questions, and that the power of the judicatures of the States should also extend to them, with equal power of final decision. This would be to defeat the whole object of the provision. There were thirteen judicatures already in existence. The evil complained of, or the danger to be guarded against, was contradiction and repugnance in the decisions of these judicatures. If the framers of the Constitution meant to create a fourteenth, and yet not to give it power to revise and control the decisions of the existing thirteen, then they only intended to augment the existing evil and the apprehended danger by increasing still further the chances of discordant judgments.

Why, sir, has it become a settled axiom in politics that every government must have a judicial power coextensive with its legislative power? Certainly, there is only this reason, namely, that the laws may receive a uniform interpretation and a uniform execution. This object cannot be otherwise attained. A statute is what it is judicially interpreted to be; and if it be construed one way in New Hampshire, and another way in Georgia, there is no uniform law. One supreme court, with appellate and final jurisdiction, is the natural and only adequate means, in any government, to secure this uniformity. The Convention saw all this clearly; and the resolution which I have quoted, never afterward rescinded, passed through various modifications, till it finally received the form which the article now bears in the Constitution.

It is undeniably true, then, that the framers of the Constitution intended to create a national judicial power, which should be paramount on national subjects. And after the Constitution was framed, and while the whole country was engaged in discussing its merits, one of its most distinguished advocates, Mr. Madison, told the people that it was true, that, in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide is to be established under the general government. Mr. Martin, who had been a member of the Convention, asserted the same thing to the Legislature of Maryland, and urged it as a reason for rejecting the Constitution. Mr. Pinckney, himself also a leading member of the Convention, declared it to the people of South Carolina. Everywhere it was admitted, by friends and foes, that this power was in the Constitution. By some it was thought dangerous, by most it was thought necessary; but by all it

was agreed to be a power actually contained in the instrument. The Convention saw the absolute necessity of some control in the national government over State laws. Different modes of establishing this control were suggested and considered. At one time, it was proposed that the laws of the States should, from time to time, be laid before Congress, and that Congress should possess a negative over them. But this was thought inexpedient and inadmissible; and in its place, and expressly as a substitute for it, the existing provision was introduced; that is to say, a provision by which the Federal courts should have authority to overrule such State laws as might be in manifest contravention of the Constitution. The writers of the "Federalist," in explaining the Constitution, while it was yet pending before the people, and still unadopted, give this account of the matter in terms, and assign this reason for the article as it now stands. By this provision Congress escaped the necessity of any revision of State laws, left the whole sphere of State legislation quite untouched, and yet obtained a security against any infringement of the constitutional power of the general government. Indeed, sir, allow me to ask again, if the national judiciary was not to exercise a power of revision on constitutional questions over the judicatures of the States, why was any national judicature erected at all? Can any man give a sensible reason for having a judicial power in this government, unless it be for the sake of maintaining a uniformity of decision on questions arising under the Constitution and laws of Congress, and insuring its execution? And does not this very idea of uniformity necessarily imply that the construction given by the national courts is to be the prevailing construction? How else, sir, is it possible that uniformity can be preserved?

Gentlemen appear to me, sir, to look at but one side of the question. They regard only the supposed danger of trusting a government with the interpretation of its own powers. But will they view the question in its other aspect? Will they show us how it is possible for a government to get along with four-and-twenty interpreters of its laws and powers? Gentlemen argue, too, as if, in these cases, the State would be always right, and the general government always wrong. But suppose the reverse—suppose the State wrong (and, since they differ, some of them must be wrong)—are the most important and essential operations of the government to be embarrassed and arrested, because one State holds the contrary opinion? Mr. President, every argument which refers the constitutionality of acts of Congress to State decision appeals from the majority to the minority; it appeals from the common interest to a particular interest; from the counsels of all to the counsel of one; and endeavors to supersede the judgment of the whole by the judgment of a part.

I think it is clear, sir, that the Constitution, by express provision, by definite and unequivocal words, as well as by necessary implication, has constituted the Supreme Court of the United States the appellate tribunal in all cases of a constitutional nature which assume the shape of a suit, in law or equity. And I think I cannot do better than to leave this part of the subject by reading the remarks made upon it in the Convention of Connecticut, by Mr. Ellsworth; a gentleman, sir, who has left behind him, on the records of the government of his country, proofs of the clearest intelligence and of the deepest sagacity, as well as of the utmost purity and integrity of character. "This Constitution," says he, "defines the extent of the powers of the general

government. If the general legislature should, at any time, overleap their limits, the judicial department is a constitutional check. If the United States go beyond their powers, if they make a law which the Constitution does not authorize, it is void; and the judiciary power, the national judges, who, to secure their impartiality, are to be made independent, will declare it to be void. On the other hand, if the States go beyond their limits, if they make a law which is a usurpation upon the general government, the law is void; and upright, independent judges will declare it to be so." Nor did this remain merely matter of private opinion. In the very first session of the first Congress, with all these well-known objects, both of the Convention and the people, full and fresh in his mind, Mr. Ellsworth, as is generally understood, reported the bill for the organization of the judicial department, and in that bill made provision for the exercise of this appellate power of the Supreme Court, in all the proper cases, in whatsoever court arising; and this appellate power has now been exercised for more than forty years, without interruption, and without doubt.

As to the cases, sir, which do not come before the courts, those political questions which terminate with the enactments of Congress, it is of necessity that these should be ultimately decided by Congress itself. Like other Legislatures, it must be trusted with this power. The members of Congress are chosen by the people, and they are answerable to the people; like other public agents, they are bound by oath to support the Constitution. These are the securities that they will not violate their duty, nor transcend their powers. They are the same securities that prevail in other popular governments; nor is it easy to see how grants of

power can be more safely guarded, without rendering them nugatory. If the case cannot come before the courts, and if Congress be not trusted with its decision, who shall decide it? The gentleman says, each State is to decide it for herself. If so, then, as I have already urged, what is law in one State is not law in another. Or, if the resistance of one State compels an entire repeal of the law, then a minority, and that a small one, governs the whole country.

Sir, those who espouse the doctrines of nullification reject, as it seems to me, the first great principle of all republican liberty; that is, that the majority must govern. In matters of common concern, the judgment of a majority must stand as the judgment of the whole. This is a law imposed on us by the absolute necessity of the case; and if we do not act upon it, there is no possibility of maintaining any government but despotism. We hear loud and repeated denunciations against what is called majority government. It is declared, with much warmth, that a majority government cannot be maintained in the United States. What, then, do gentlemen wish? Do they wish to establish a minority government? Do they wish to subject the will of the many to the will of the few? The honorable gentleman from South Carolina has spoken of absolute majorities and majorities concurrent; language wholly unknown to our Constitution, and to which it is not easy to affix definite ideas. As far as I understand it, it would teach us that the absolute majority may be found in Congress, but the majority concurrent must be looked for in the States; that is to say, sir, stripping the matter of this novelty of phrase, that the dissent of one or more States, as States, renders void the decision of a majority of Congress, so far as that State is concerned.

And so this doctrine, running but a short career, like other dogmas of the day, terminates in nullification.

If this vehement invective against majorities meant no more than that, in the construction of government, it is wise to provide checks and balances, so that there should be various limitations on the power of the mere majority, it would only mean what the Constitution of the United States has already abundantly provided. It is full of such checks and balances. In its very organization, it adopts a broad and most effective principle in restraint of the power of mere majorities. A majority of the people elects the House of Representatives, but it does not elect the Senate. The Senate is elected by the States, each State having, in this respect, an equal power. No law, therefore, can pass, without the assent of the representatives of the people, and a majority of the representatives of the States also. A majority of the representatives of the people must concur, and a majority of the States must concur, in every act of Congress; and the President is elected on a plan compounded of both these principles. But having composed one House of Representatives chosen by the people in each State, according to their numbers, and the other of an equal number of members from every State, whether larger or smaller, the Constitution gives to majorities in these Houses thus constituted the full and entire power of passing laws, subject always to the constitutional restrictions and to the approval of the President. To subject them to any other power is clear usurpation. The majority of one House may be controlled by the majority of the other; and both may be restrained by the President's negative. These are checks and balances provided by the Constitution, existing in the government itself, and wisely intended to secure delibera-

tion and caution in legislative proceedings. But to resist the will of the majority in both Houses, thus constitutionally exercised; to insist on the lawfulness of interposition by an extraneous power; to claim the right of defeating the will of Congress, by setting up against it the will of a single State—is neither more nor less, as it strikes me, than a plain attempt to overthrow the government. The constituted authorities of the United States are no longer a government, if they be not masters of their own will; they are no longer a government, if an external power may arrest their proceedings; they are no longer a government, if acts passed by both Houses, and approved by the President, may be nullified by State vetoes or State ordinances. Does any one suppose it could make any difference, as to the binding authority of an act of Congress, and of the duty of a State to respect it, whether it passed by a mere majority of both Houses, or by three-fourths of each, or the unanimous vote of each? Within the limits and restrictions of the Constitution, the government of the United States, like all other popular governments, acts by majorities. It can act no otherwise. Whoever, therefore, denounces the government of majorities, denounces the government of his own country, and denounces all free governments. And whoever would restrain these majorities, while acting within their constitutional limits, by an external power, whatever he may intend, asserts principles which, if adopted, can lead to nothing else than the destruction of the government itself.

Does not the gentleman perceive, sir, how his argument against majorities might here be retorted upon him? Does he not see how cogently he might be asked, whether it be the character of nullification to practice what it preaches? Look to South Carolina, at the present moment. How far

are the rights of minorities there respected? I confess, sir, I have not known, in peaceable times, the power of the majority carried with a higher hand, or upheld with more relentless disregard of the rights, feelings, and principles of the minority—a minority embracing, as the gentleman himself will admit, a large portion of the worth and respectability of the State—a minority comprehending in its numbers men who have been associated with him, and with us, in these halls of legislation; men who have served their country at home and honored it abroad; men who would cheerfully lay down their lives for their native State, in any cause which they could regard as the cause of honor and duty; men above fear, and above reproach, whose deepest grief and distress spring from the conviction that the present proceedings of the State must ultimately reflect discredit upon her. How is this minority, how are these men, regarded? They are inthralled and disfranchised by ordinances and acts of legislation; subjected to tests and oaths, incompatible, as they conscientiously think, with oaths already taken, and obligations already assumed; they are proscribed and denounced as recreants to duty and patriotism, and slaves to a foreign power. Both the spirit which pursues them, and the positive measures which emanate from that spirit, are harsh and proscriptive beyond all precedent within my knowledge, except in periods of professed revolution.

It is not, sir, one would think, for those who approve these proceedings to complain of the power of majorities.

Mr. President, all popular governments rest on two principles, or two assumptions:

First, That there is so far a common interest among those over whom the government extends, as that it may provide

for the defence, protection, and good government of the whole, without injustice or oppression to parts; and

Secondly, That the representatives of the people, and especially the people themselves, are secure against general corruption, and may be trusted, therefore, with the exercise of power.

Whoever argues against these principles argues against the practicability of all free governments. And whoever admits these, must admit, or cannot deny, that power is as safe in the hands of Congress as in those of other representative bodies. Congress is not irresponsible. Its members are agents of the people, elected by them, answerable to them, and liable to be displaced or superseded, at their pleasure; and they possess as fair a claim to the confidence of the people, while they continue to deserve it, as any other public political agents.

If then, sir, the manifest intention of the Convention, and the contemporary admission of both friends and foes, prove anything; if the plain text of the instrument itself, as well as the necessary implication from other provisions, prove anything; if the early legislation of Congress, the course of judicial decisions, acquiesced in by all the States for forty years, prove anything—then it is proved that there is a supreme law, and a final interpreter.

My fourth and last proposition, Mr. President, was, that any attempt by a State to abrogate or nullify acts of Congress is a usurpation on the powers of the general government and on the equal rights of other States, a violation of the Constitution, and a proceeding essentially revolutionary. This is undoubtedly true, if the preceding propositions be regarded as proved. If the government of the United States be trusted with the duty, in any department, of declaring the

extent of its own powers, then a State ordinance, or act of legislation, authorizing resistance to an act of Congress, on the alleged ground of its unconstitutionality, is manifestly a usurpation upon its powers. If the States have equal rights in matters concerning the whole, then for one State to set up her judgment against the judgment of the rest, and to insist on executing that judgment by force, is also a manifest usurpation on the rights of other States. If the Constitution of the United States be a government proper, with authority to pass laws, and to give them a uniform interpretation and execution, then the interposition of a State, to enforce her own construction, and to resist, as to herself, that law which binds the other States, is a violation of the Constitution.

If that be revolutionary which arrests the legislative, executive, and judicial power of government, dispenses with existing oaths and obligations of obedience, and elevates another power to supreme dominion, then nullification is revolutionary. Or if that be revolutionary the natural tendency and practical effect of which are to break the Union into fragments, to sever all connection among the people of the respective States, and to prostrate this general government in the dust, then nullification is revolutionary.

Nullification, sir, is as distinctly revolutionary as secession; but I cannot say that the revolution which it seeks is one of so respectable a character. Secession would, it is true, abandon the Constitution altogether; but then it would profess to abandon it. Whatever other inconsistencies it might run into, one, at least, it would avoid. It would not belong to a government, while it rejected its authority. It would not repel the burden, and continue to enjoy the benefits. It would not aid in passing laws which

others are to obey, and yet reject their authority as to itself. It would not undertake to reconcile obedience to public authority with an asserted right of command over that same authority. It would not be in the government, and above the government, at the same time. But though secession may be a more respectable mode of attaining the object than nullification, it is not more truly revolutionary. Each, and both, resist the constitutional authorities; each, and both, would sever the Union and subvert the government.

Mr. President, having detained the Senate so long already, I will not now examine at length the ordinance and laws of South Carolina. These papers are well drawn for their purpose. Their authors understood their own objects. They are called a peaceable remedy, and we have been told that South Carolina, after all, intends nothing but a lawsuit. A very few words, sir, will show the nature of this peaceable remedy, and of the lawsuit which South Carolina contemplates.

In the first place, the ordinance declares the law of last July, and all other laws of the United States laying duties, to be absolutely null and void, and makes it unlawful for the constituted authorities of the United States to enforce the payment of such duties. It is therefore, sir, an indictable offence, at this moment, in South Carolina, for any person to be concerned in collecting revenue under the laws of the United States. It being declared, by what is considered a fundamental law of the State, unlawful to collect these duties, an indictment lies, of course, against any one concerned in such collection; and he is, on general principles, liable to be punished by fine and imprisonment. The terms, it is true, are, that it is unlawful "to enforce the pay-

ment of duties"; but every custom house officer enforces payment while he detains the goods in order to obtain such payment. The ordinance, therefore, reaches everybody concerned in the collection of the duties.

This is the first step in the prosecution of the peaceable remedy. The second is more decisive. By the act commonly called the replevin law, any person whose goods are seized or detained by the collector for the payment of duties may sue out a writ of replevin, and, by virtue of that writ, the goods are to be restored to him. A writ of replevin is a writ which the sheriff is bound to execute, and for the execution of which he is bound to employ force, if necessary. He may call out the posse, and must do so, if resistance be made. This posse may be armed or unarmed. It may come forth with military array, and under the lead of military men. Whatever number of troops may be assembled in Charleston, they may be summoned, with the Governor, or commander-in-chief, at their head, to come in aid of the sheriff. It is evident, then, sir, that the whole military power of the State is to be employed, if necessary, in dispossessing the custom house officers, and in seizing and holding the goods, without paying the duties. This is the second step in the peaceable remedy.

Sir, whatever pretences may be set up to the contrary, this is the direct application of force, and of military force. It is unlawful, in itself, to replevy goods in the custody of the collectors. But this unlawful act is to be done, and it is to be done by power. Here is a plain interposition, by physical force, to resist the laws of the Union. The legal mode of collecting duties is to detain the goods till such duties are paid or secured. But force comes, and overpowers the collector and his assistants, and takes away the

goods, leaving the duties unpaid. There cannot be a clearer case of forcible resistance to law. And it is provided that the goods thus seized shall be held against any attempt to retake them, by the same force which seized them.

Having thus dispossessed the officers of the government of the goods, without payment of duties, and seized and secured them by the strong arm of the State, only one thing more remains to be done, and that is, to cut off all possibility of legal redress; and that, too, is accomplished, or thought to be accomplished. The ordinance declares, that all judicial proceedings, founded on the revenue laws (including, of course, proceedings in the courts of the United States), shall be null and void. This nullifies the judicial power of the United States. Then comes the test-oath act. This requires all State judges and jurors in the State courts to swear that they will execute the ordinance, and all acts of the Legislature passed in pursuance thereof. The ordinance declares, that no appeal shall be allowed from the decision of the State courts to the Supreme Court of the United States; and the replevin act makes it an indictable offence for any clerk to furnish a copy of the record, for the purpose of such appeal.

The two principal provisions on which South Carolina relies, to resist the laws of the United States, and nullify the authority of this government, are, therefore, these:

1. A forcible seizure of goods, before duties are paid or secured, by the power of the State, civil and military.

2. The taking away, by the most effectual means in her power, of all legal redress in the courts of the United States; the confining of judicial proceedings to her own State tribunals; and the compelling of her judges and jurors of these her own courts to take an oath, beforehand, that they will

decide all cases according to the ordinance, and the acts passed under it; that is, that they will decide the cause one way. They do not swear to try it, on its own merits; they only swear to decide it as nullification requires.

The character, sir, of these provisions defies comment. Their object is as plain as their means are extraordinary. They propose direct resistance, by the whole power of the State, to laws of Congress, and cut off, by methods deemed adequate, any redress by legal and judicial authority. They arrest legislation, defy the executive, and banish the judicial power of this government. They authorize and command acts to be done, and done by force, both of numbers and of arms, which, if done, and done by force, are clearly acts of rebellion and treason.

Such, sir, are the laws of South Carolina; such, sir, is the peaceable remedy of nullification. Has not nullification reached, sir, even thus early, that point of direct and forcible resistance to law to which I intimated, three years ago, it plainly tended?

And now, Mr. President, what is the reason for passing laws like these? What are the oppressions experienced under the Union, calling for measures which thus threaten to sever and destroy it? What invasions of public liberty, what ruin to private happiness, what long list of rights violated, or wrongs unredressed, is to justify to the country, to posterity, and to the world, this assault upon the free Constitution of the United States, this great and glorious work of our fathers? At this very moment, sir, the whole land smiles in peace, and rejoices in plenty. A general and a high prosperity pervades the country; and, judging by the common standard, by increase of population and wealth, or judging by the opinions of that portion of her people not

embarked in these dangerous and desperate measures, this prosperity overspreads South Carolina herself.

Thus happy at home, our country, at the same time, holds high the character of her institutions, her power, her rapid growth, and her future destiny, in the eyes of all foreign States. One danger only creates hesitation; one doubt only exists, to darken the otherwise unclouded brightness of that aspect which she exhibits to the view and to the admiration of the world. Need I say, that that doubt respects the permanency of our Union? and need I say, that that doubt is now caused, more than anything else, by these very proceedings of South Carolina? Sir, all Europe is, at this moment, beholding us, and looking for the issue of this controversy; those who hate free institutions, with malignant hope; those who love them, with deep anxiety and shivering fear.

The cause, then, sir, the cause! Let the world know the cause which has thus induced one State of the Union to bid defiance to the power of the whole, and openly to talk of secession. Sir, the world will scarcely believe that this whole controversy, and all the desperate measures which its support requires, have no other foundation than a difference of opinion upon a provision of the Constitution, between a majority of the people of South Carolina, on one side, and a vast majority of the whole people of the United States, on the other. It will not credit the fact, it will not admit the possibility, that, in an enlightened age, in a free, popular Republic, under a Constitution where the people govern, as they must always govern under such systems, by majorities, at a time of unprecedented prosperity, without practical oppression, without evils such as may not only be pretended, but felt and experienced—evils not slight

or temporary, but deep, permanent, and intolerable—a single State should rush into conflict with all the rest, attempt to put down the power of the Union by her own laws, and to support those laws by her military power, and thus break up and destroy the world's last hope. And well the world may be incredulous. We, who see and hear it, can ourselves hardly yet believe it. Even after all that had preceded it, this ordinance struck the country with amazement. It was incredible and inconceivable that South Carolina should plunge headlong into resistance to the laws on a matter of opinion, and on a question in which the preponderance of opinion, both of the present day and of all past time, was so overwhelmingly against her. The ordinance declares that Congress has exceeded its just power by laying duties on imports, intended for the protection of manufactures. This is the opinion of South Carolina; and on the strength of that opinion she nullifies the laws. Yet has the rest of the country no right to its opinion also? Is one State to sit sole arbitress? She maintains that those laws are plain, deliberate, and palpable violations of the Constitution; that she has a sovereign right to decide this matter; and that, having so decided, she is authorized to resist their execution by her own sovereign power; and she declares that she will resist it, though such resistance should shatter the Union into atoms.

Mr. President, I do not intend to discuss the propriety of these laws at large; but I will ask, How are they shown to be thus plainly and palpably unconstitutional? Have they no countenance at all in the Constitution itself? Are they quite new in the history of the government? Are they a sudden and violent usurpation on the rights of the States? Sir, what will the civilized world say, what will posterity

say, when they learn that similar laws have existed from the very foundation of the government, that for thirty years the power was never questioned, and that no State in the Union has more freely and unequivocally admitted it than South Carolina herself?

To lay and collect duties and imposts is an express power granted by the Constitution to Congress. It is, also, an exclusive power; for the Constitution as expressly prohibits all the States from exercising it themselves. This express and exclusive power is unlimited in the terms of the grant, but is attended with two specific restrictions: first, that all duties and imposts shall be equal in all the States; second, that no duties shall be laid on exports. The power, then, being granted, and being attended with these two restrictions, and no more, who is to impose a third restriction on the general words of the grant? If the power to lay duties, as known among all other nations, and as known in all our history, and as it was perfectly understood when the Constitution was adopted, includes a right of discriminating while exercising the power, and of laying some duties heavier and some lighter, for the sake of encouraging our own domestic products, what authority is there for giving to the words used in the Constitution a new, narrow, and unusual meaning? All the limitations which the Constitution intended, it has expressed; and what it has left unrestricted is as much a part of its will as the restraints which it has imposed.

But these laws, it is said, are unconstitutional on account of the motive. How, sir, can a law be examined on any such ground? How is the motive to be ascertained? One House, or one member, may have one mo-

tive; the other House, or another member, another. One motive may operate to-day, and another to-morrow. Upon any such mode of reasoning as this, one law might be unconstitutional now, and another law, in exactly the same words, perfectly constitutional next year. Besides, articles may not only be taxed for the purpose of protecting home products, but other articles may be left free, for the same purpose and with the same motive. A law, therefore, would become unconstitutional from what it omitted, as well as from what it contained. Mr. President, it is a settled principle, acknowledged in all legislative halls, recognized before all tribunals, sanctioned by the general sense and understanding of mankind, that there can be no inquiry into the motives of those who pass laws, for the purpose of determining on their validity. If the law be within the fair meaning of the words in the grant of the power, its authority must be admitted until it is repealed. This rule, everywhere acknowledged, everywhere admitted, is so universal and so completely without exception, that even an allegation of fraud, in the majority of a Legislature, is not allowed as a ground to set aside a law.

But, sir, is it true that the motive for these laws is such as is stated? I think not. The great object of all these laws is, unquestionably, revenue. If there were no occasion for revenue, the laws would not have been passed; and it is notorious that almost the entire revenue of the country is derived from them. And as yet we have collected none too much revenue. The treasury has not been more reduced for many years than it is at the present moment. All that South Carolina can say is, that, in passing the laws which she now undertakes to nullify, particular imported articles were taxed, from a regard to the protection of certain arti-

cles of domestic manufacture, higher than they would have been had no such regard been entertained. And she insists, that, according to the Constitution, no such discrimination can be allowed; that duties should be laid for revenue, and revenue only; and that it is unlawful to have reference, in any case, to protection. In other words, she denies the power of discrimination. She does not, and cannot, complain of excessive taxation; on the contrary, she professes to be willing to pay any amount for revenue, merely as revenue; and up to the present moment there is no surplus of revenue. Her grievance, then, that plain and palpable violation of the Constitution, which she insists has taken place, is simply the exercise of the power of discrimination. Now, sir, is the exercise of this power of discrimination plainly and palpably unconstitutional?

I have already said, the power to lay duties is given by the Constitution in broad and general terms. There is also conferred on Congress the whole power of regulating commerce, in another distinct provision. Is it clear and palpable, sir, can any man say it is a case beyond doubt, that, under these two powers, Congress may not justly discriminate, in laying duties, for the purpose of countervailing the policy of foreign nations, or of favoring our own home productions? Sir, what ought to conclude this question forever, as it would seem to me, is, that the regulation of commerce and the imposition of duties are, in all commercial nations, powers avowedly and constantly exercised for this very end. That undeniable truth ought to settle the question; because the Constitution ought to be considered, when it uses well-known language, as using it in its well-known sense. But it is equally undeniable, that it has been, from the very first, fully believed that this power of discrimination was

conferred on Congress; and the Constitution was itself recommended, urged upon the people, and enthusiastically insisted on in some of the States, for that very reason. Not that, at that time, the country was extensively engaged in manufactures, especially of the kinds now existing. But the trades and crafts of the seaport towns, the business of the artisans and manual laborers—those employments, the work in which supplies so great a portion of the daily wants of all classes—all these looked to the new Constitution as a source of relief from the severe distress which followed the war. It would, sir, be unpardonable, at so late an hour, to go into details on this point; but the truth is as I have stated. The papers of the day, the resolutions of public meetings, the debates in the Conventions, all that we open our eyes upon in the history of the times, prove it.

Sir, the honorable gentleman from South Carolina has referred to two incidents connected with the proceedings of the Convention of Philadelphia, which he thinks are evidence to show that the power of protecting manufactures by laying duties, and by commercial regulations, was not intended to be given to Congress. The first is, as he says, that a power to protect manufactures was expressly proposed, but not granted. I think, sir, the gentleman is quite mistaken in relation to this part of the proceedings of the Convention. The whole history of the occurrence to which he alludes is simply this. Toward the conclusion of the Convention, after the provision of the Constitution had been mainly agreed upon, after the power to lay duties and the power to regulate commerce had both been granted, a long list of propositions was made and referred to the committee, containing various miscellaneous powers, some or all of which it was thought might be properly vested in Congress.

Among these was a power to establish a university; to grant charters of incorporation; to regulate stage-coaches on the post-roads; and also the power to which the gentleman refers, and which is expressed in these words: "To establish public institutions, rewards, and immunities, for the promotion of agriculture, commerce, trades, and manufactures." The committee made no report on this or various other propositions in the same list. But the only inference from this omission is, that neither the committee nor the Convention thought it proper to authorize Congress "to establish public institutions, rewards, and immunities," for the promotion of manufactures, and other interests. The Convention supposed it had done enough—at any rate, it had done all it intended—when it had given to Congress, in general terms, the power to lay imposts and the power to regulate trade. It is not to be argued, from its omission to give more, that it meant to take back what it had already given. It had given the impost power; it had given the regulation of trade; and it did not deem it necessary to give the further and distinct power of establishing public institutions.

The other fact, sir, on which the gentleman relies, is the declaration of Mr. Martin to the Legislature of Maryland. The gentleman supposes Mr. Martin to have urged against the Constitution, that it did not contain the power of protection. But if the gentleman will look again at what Mr. Martin said, he will find, I think, that what Mr. Martin complained of was, that the Constitution, by its prohibitions on the States, had taken away from the States themselves the power of protecting their own manufactures by duties on imports. This is undoubtedly true; but I find no expression of Mr. Martin intimating that the Constitution had

not conferred on Congress the same power which it had thus taken from the States. But, sir, let us go to the first Congress; let us look in upon this and the other House, at the first session of their organization.

We see, in both Houses, men distinguished among the framers, friends, and advocates of the Constitution. We see in both, those who had drawn, discussed, and matured the instrument in the Convention, explained and defended it before the people, and were now elected members of Congress, to put the new government into motion, and to carry the powers of the Constitution into beneficial execution. At the head of the government was Washington himself, who had been President of the Convention; and in his Cabinet were others most thoroughly acquainted with the history of the Constitution, and distinguished for the part taken in its discussion. If these persons were not acquainted with the meaning of the Constitution, if they did not understand the work of their own hands, who can understand it, or who shall now interpret it to us?

Sir, the volume which records the proceedings and debates of the first session of the House of Representatives lies before me. I open it, and I find that, having provided for the administration of the necessary oaths, the very first measure proposed for consideration is, the laying of imposts; and in the very first committee of the whole into which the House of Representatives ever resolved itself, on this its earliest subject, and in this its very first debate, the duty of so laying the imposts as to encourage manufactures was advanced and enlarged upon by almost every speaker, and doubted or denied by none. The first gentleman who suggests this as the clear duty of Congress, and as an object necessary to be attended to, is Mr. Fitz-

simons, of Pennsylvania; the second, Mr. White, of Virginia; the third, Mr. Tucker, of South Carolina.

But the great leader, sir, on this occasion, was Mr. Madison. Was he likely to know the intentions of the Convention and the people? Was he likely to understand the Constitution? At the second sitting of the committee, Mr. Madison explained his own opinions of the duty of Congress, fully and explicitly. I must not detain you, sir, with more than a few short extracts from these opinions, but they are such as are clear, intelligible, and decisive. "The States," says he, "that are most advanced in population, and ripe for manufactures, ought to have their particular interest attended to, in some degree. While these States retained the power of making regulations of trade, they had the power to cherish such institutions. By adopting the present Constitution they have thrown the exercise of this power into other hands; they must have done this with an expectation that those interests would not be neglected here." In another report of the same speech, Mr. Madison is represented as using still stronger language; as saying that, the Constitution having taken this power away from the States and conferred it on Congress, it would be a fraud on the States and on the people were Congress to refuse to exercise it.

Mr. Madison argues, sir, on this early and interesting occasion, very justly and liberally, in favor of the general principles of unrestricted commerce. But he argues, also, with equal force and clearness, for certain important exceptions to these general principles. The first, sir, respects those manufactures which had been brought forward under encouragement by the State governments. "It would be cruel," says Mr. Madison, "to neglect them, and to divert

their industry into other channels; for it is not possible for the hand of man to shift from one employment to another without being injured by the change." Again: "There may be some manufactures which, being once formed, can advance toward perfection without any adventitious aid; while others, for want of the fostering hand of government, will be unable to go on at all. Legislative provision, therefore, will be necessary to collect the proper objects for this purpose; and this will form another exception to my general principle." And again: "The next exception that occurs is one on which great stress is laid by some well-informed men, and this with great plausibility; that each nation should have, within itself, the means of defence, independent of foreign supplies; that, in whatever relates to the operations of war, no State ought to depend upon a precarious supply from any part of the world. There may be some truth in this remark; and therefore it is proper for legislative attention."

In the same debate, sir, Mr. Burk, from South Carolina, supported a duty on hemp, for the express purpose of encouraging its growth on the strong lands of South Carolina. "Cotton," he said, "was also in contemplation among them, and, if good seed could be procured, he hoped might succeed." Afterward, sir, the cotton was obtained, its culture was protected, and it did succeed. Mr. Smith, a very distinguished member from the same State, observed: "It has been said, and justly, that the States which adopted this Constitution expected its administration would be conducted with a favorable hand. The manufacturing States wished the encouragement of manufactures, the maritime States the encouragement of ship building, and the agricultural States the encouragement of agriculture."

Sir, I will detain the Senate by reading no more extracts from these debates. I have already shown a majority of the members of South Carolina, in this very first session, acknowledging this power of protection, voting for its exercise, and proposing its extension to their own products.

Similar propositions came from Virginia; and, indeed, sir, in the whole debate, at whatever page you open the volume, you find the power admitted, and you find it applied to the protection of particular articles, or not applied, according to the discretion of Congress. No man denied the power, no man doubted it; the only questions were, in regard to the several articles proposed to be taxed, whether they were fit subjects for protection, and what the amount of that protection ought to be. Will gentlemen, sir, now answer the argument drawn from these proceedings of the first Congress? Will they undertake to deny that that Congress did act on the avowed principle of protection? Or, if they admit it, will they tell us how those who framed the Constitution fell, thus early, into this great mistake about its meaning? Will they tell us how it should happen that they had so soon forgotten their own sentiments and their own purposes? I confess I have seen no answer to this argument, nor any respectable attempt to answer it. And, sir, how did this debate terminate? What law was passed? There it stands, sir, among the statutes, the second law in the book. It has a preamble, and that preamble expressly recites, that the duties which it imposes are laid "for the support of government, for the discharge of the debts of the United States, and the encouragement and protection of manufactures." Until, sir, this early legislation, thus coeval with the Constitution itself, thus full and explicit, can be explained

away, no man can doubt of the meaning of that instrument in this respect.

Mr. President, this power of discrimination, thus admitted, avowed, and practiced upon in the first revenue act, has never been denied or doubted until within a few years past. It was not at all doubted in 1816, when it became necessary to adjust the revenue to a state of peace. On the contrary, the power was then exercised, not without opposition as to its expediency, but, as far as I remember or have understood, without the slightest opposition founded on any supposed want of constitutional authority. Certainly, South Carolina did not doubt it. The tariff of 1816 was introduced, carried through, and established, under the lead of South Carolina. Even the minimum policy is of South Carolina origin. The honorable gentleman himself supported, and ably supported, the tariff of 1816. He has informed us, sir, that his speech on that occasion was sudden and off-hand, he being called up by the request of a friend. I am sure the gentleman so remembers it, and that it was so; but there is, nevertheless, much method, arrangement, and clear exposition in that extempore speech. It is very able, very, very much to the point, and very decisive. And in another speech, delivered two months earlier, on the proposition to repeal the internal taxes, the honorable gentleman had touched the same subject, and had declared "that a certain encouragement ought to be extended at least to our woollen and cotton manufactures." I do not quote these speeches, sir, for the purpose of showing that the honorable gentleman has changed his opinion: my object is other and higher. I do it for the sake of saying that that cannot be so plainly and palpably unconstitutional as to warrant resistance to law, nullification, and revolution, which the hon-

orable gentleman and his friends have heretofore agreed to and acted upon without doubt and without hesitation. Sir, it is no answer to say that the tariff of 1816 was a revenue bill. So are they all revenue bills. The point is, and the truth is, that the tariff of 1816, like the rest, did discriminate; it did distinguish one article from another; it did lay duties for protection. Look to the case of coarse cottons under the minimum calculation: the duty on these was from sixty to eighty per cent. Something besides revenue, certainly, was intended in this; and, in fact, the law cut up our whole commerce with India in that article.

It is, sir, only within a few years that Carolina has denied the constitutionality of these protective laws. The gentleman himself has narrated to us the true history of her proceedings on this point. He says, that, after the passing of the law of 1828, despairing then of being able to abolish the system of protection, political men went forth among the people, and set up the doctrine that the system was unconstitutional. "And the people," says the honorable gentleman, "received the doctrine." This, I believe, is true, sir. The people did then receive the doctrine; they had never entertained it before. Down to that period, the constitutionality of these laws had been no more doubted in South Carolina than elsewhere. And I suspect it is true, sir, and I deem it a great misfortune, that, to the present moment, a great portion of the people of the State have never yet seen more than one side of the argument. I believe that thousands of honest men are involved in scenes now passing, led away by one-sided views of the question, and following their leaders by the impulses of an unlimited confidence. Depend upon it, sir, if we can avoid the shock of arms, a day for reconsideration and reflection will come;

truth and reason will act with their accustomed force, and the public opinion of South Carolina will be restored to its usual constitutional and patriotic tone.

But, sir, I hold South Carolina to her ancient, her cool, her uninfluenced, her deliberate opinions. I hold her to her own admissions, nay to her own claims and pretensions, in 1789, in the first Congress, and to her acknowledgments and avowed sentiments through a long series of succeeding years. I hold her to the principles on which she led Congress to act in 1816; or, if she have changed her own opinions, I claim some respect for those who still retain the same opinions. I say she is precluded from asserting that doctrines, which she has herself so long and so ably sustained, are plain, palpable, and dangerous violations of the Constitution.

Mr. President, if the friends of nullification should be able to propagate their opinions, and give them practical effect, they would, in my judgment, prove themselves the most skilful "architects of ruin," the most effectual extinguishers of high-raised expectation, the greatest blasters of human hopes, that any age has produced. They would stand up to proclaim, in tones which would pierce the ears of half the human race, that the last great experiment of representative government had failed. They would send forth sounds, at the hearing of which the doctrine of the divine right of kings would feel, even in its grave, a returning sensation of vitality and resuscitation. Millions of eyes, of those who now feed their inherent love of liberty on the success of the American example, would turn away from beholding our dismemberment, and find no place on earth whereon to rest their gratified sight. Amid the incantations and orgies of nullification, secession, disunion,

and revolution, would be celebrated the funeral rites of constitutional and republican liberty.

But, sir, if the government do its duty, if it act with firmness and with moderation, these opinions cannot prevail. Be assured, sir, be assured, that, among the political sentiments of this people, the love of union is still uppermost. They will stand fast by the Constitution, and by those who defend it. I rely on no temporary expedients, on no political combination; but I rely on the true American feeling, the genuine patriotism of the people, and the imperative decision of the public voice. Disorder and confusion, indeed, may arise; scenes of commotion and contest are threatened, and perhaps may come. With my whole heart I pray for the continuance of the domestic peace and quiet of the country. I desire, most ardently, the restoration of affection and harmony to all its parts. I desire that every citizen of the whole country may look to this government with no other sentiments than those of grateful respect and attachment. But I cannot yield even to kind feelings the cause of the Constitution, the true glory of the country, and the great trust which we hold in our hands for succeeding ages. If the Constitution cannot be maintained without meeting these scenes of commotion and contest, however unwelcome, they must come. We cannot, we must not, we dare not, omit to do that which, in our judgment, the safety of the Union requires. Not regardless of consequences, we must yet meet consequences; seeing the hazards which surround the discharge of public duty, it must yet be discharged. For myself, sir, I shun no responsibility justly devolving on me, here or elsewhere, in attempting to maintain the cause. I am bound to it by indissoluble ties of affection and duty, and I shall cheerfully partake in its

fortunes and its fate. I am ready to perform my own appropriate part, whenever and wherever the occasion may call on me, and to take my chance among those upon whom blows may fall first and fall thickest. I shall exert every faculty I possess in aiding to prevent the Constitution from being nullified, destroyed, or impaired; and even should I see it fall, I will still, with a voice feeble, perhaps, but earnest as ever issued from human lips, and with fidelity and zeal which nothing shall extinguish, call on the people to come to its rescue.

THE CONSTITUTION AND THE UNION

A SPEECH DELIVERED IN THE SENATE OF THE UNITED STATES, ON THE SEVENTH OF MARCH, 1850

Mr. President:

I WISH to speak to-day, not as a Massachusetts man, nor as a Northern man, but as an American, and a member of the Senate of the United States. It is fortunate that there is a Senate of the United States; a body not yet moved from its propriety, not lost to a just sense of its own dignity and its own high responsibilities, and a body to which the country looks, with confidence, for wise, moderate, patriotic, and healing counsels. It is not to be denied that we live in the midst of strong agitations, and are surrounded by very considerable dangers to our institutions and government. The imprisoned winds are let loose. The East, the North, and the stormy South combine to throw the whole sea into commotion, to toss its billows to the skies, and disclose its profoundest depths. I do not affect to regard myself, Mr. President, as holding, or as fit to hold, the helm in this combat with the political

elements; but I have a duty to perform, and I mean to perform it with fidelity, not without a sense of existing dangers, but not without hope. I have a part to act, not for my own security or safety, for I am looking out for no fragment upon which to float away from the wreck, if wreck there must be, but for the good of the whole, and the preservation of all, and there is that which will keep me to my duty during this struggle, whether the sun and the stars shall appear, or shall not appear, for many days. I speak to-day for the preservation of the Union. "Hear me for my cause." I speak to-day, out of a solicitous and anxious heart, for the restoration to the country of that quiet and that harmony which make the blessings of this Union so rich, and so dear to us all. These are the topics that I propose to myself to discuss; these are the motives, and the sole motives, that influence me in the wish to communicate my opinions to the Senate and the country; and if I can do anything, however little, for the promotion of these ends, I shall have accomplished all that I expect.

Mr. President, it may not be amiss to recur very briefly to the events which, equally sudden and extraordinary, have brought the country into its present political condition. In May, 1846, the United States declared war against Mexico. Our armies, then on the frontiers, entered the provinces of that republic, met and defeated all her troops, penetrated her mountain passes, and occupied her capital. The marine force of the United States took possession of her forts and her towns, on the Atlantic and on the Pacific. In less than two years a treaty was negotiated, by which Mexico ceded to the United States a vast territory, extending seven or eight hundred miles along the shores of the Pacific, and reaching back over the mountains, and across

the desert, until it joins the frontier of the State of Texas. It so happened, in the distracted and feeble condition of the Mexican Government, that, before the declaration of war by the United States against Mexico had become known in California, the people of California, under the lead of American officers, overthrew the existing Mexican provincial government, and raised an independent flag. When the news arrived at San Francisco that war had been declared by the United States against Mexico, this independent flag was pulled down, and the Stars and Stripes of this Union hoisted in its stead. So, sir, before the war was over, the forces of the United States, military and naval, had possession of San Francisco and Upper California, and a great rush of emigrants from various parts of the world took place into California in 1846 and 1847. But now behold another wonder.

In January of 1848, a party of Mormons made a discovery of an extraordinarily rich mine of gold, or rather of a great quantity of gold, hardly proper to be called a mine, for it was spread near the surface, on the lower part of the south or American branch of the Sacramento. They attempted to conceal their discovery for some time; but soon another discovery of gold, perhaps of greater importance, was made, on another part of the American branch of the Sacramento, and near Sutter's Fort, as it is called. The fame of these discoveries spread far and wide. They inflamed more and more the spirit of emigration toward California, which had already been excited; and adventurers crowded into the country by hundreds, and flocked toward the bay of San Francisco. This, as I have said, took place in the winter and spring of 1848. The digging commenced in the spring of that year, and from that time to this the

work of searching for gold has been prosecuted with a success not heretofore known in the history of this globe. You recollect, sir, how incredulous at first the American public was at the accounts which reached us of these discoveries; but we all know, now, that these accounts received, and continue to receive, daily confirmation, and down to the present moment I suppose the assurance is as strong, after the experience of these several months, of the existence of deposits of gold apparently inexhaustible in the regions near San Francisco, in California, as it was at any period of the earlier dates of the accounts.

It so happened, sir, that although, after the return of peace, it became a very important subject for legislative consideration and legislative decision to provide a proper Territorial government for California, yet differences of opinion between the two Houses of Congress prevented the establishment of any such Territorial government at the last session. Under this state of things, the inhabitants of California, already amounting to a considerable number, thought it to be their duty, in the summer of last year, to establish a local government. Under the proclamation of General Riley, the people chose delegates to a convention, and that convention met at Monterey. It formed a Constitution for the State of California, which, being referred to the people, was adopted by them in their primary assemblages. Desirous of immediate connection with the United States, its Senators were appointed and Representatives chosen, who have come hither, bringing with them the authentic Constitution of the State of California; and they now present themselves, asking, in behalf of their constituents, that it may be admitted into this Union as one of the United States. This Constitution, sir, contains an ex-

press prohibition of slavery, or involuntary servitude, in the State of California. It is said, and I suppose truly, that, of the members who composed that convention, some sixteen were natives of, and had been residents in, the slaveholding States, about twenty-two were from the non-slaveholding States, and the remaining ten members were either native Californians or old settlers in that country. This prohibition of slavery, it is said, was inserted with entire unanimity.

It is this circumstance, sir, the prohibition of slavery, which has contributed to raise, I do not say it has wholly raised, the dispute as to the propriety of the admission of California into the Union under this Constitution. It is not to be denied, Mr. President, nobody thinks of denying, that, whatever reasons were assigned at the commencement of the late war with Mexico, it was prosecuted for the purpose of the acquisition of territory, and under the alleged argument that the cession of territory was the only form in which proper compensation could be obtained by the United States, from Mexico, for the various claims and demands which the people of this country had against that government. At any rate, it will be found that President Polk's message, at the commencement of the session of December, 1847, avowed that the war was to be prosecuted until some acquisition of territory should be made. As the acquisition was to be south of the line of the United States, in warm climates and countries, it was naturally, I suppose, expected by the South, that whatever acquisitions were made in that region would be added to the slaveholding portion of the United States. Very little of accurate information was possessed of the real physical character, either of California or New Mexico, and events have not

turned out as was expected. Both California and New Mexico are likely to come in as free States; and therefore some degree of disappointment and surprise has resulted. In other words, it is obvious that the question which has so long harassed the country, and at some times very seriously alarmed the minds of wise and good men, has come upon us for a fresh discussion—the question of slavery in these United States.

Now, sir, I propose, perhaps at the expense of some detail and consequent detention of the Senate, to review historically this question, which, partly in consequence of its own importance, and partly, perhaps mostly, in consequence of the manner in which it has been discussed in different portions of the country, has been a source of so much alienation and unkind feeling between them.

We all know, sir, that slavery has existed in the world from time immemorial. There was slavery, in the earliest periods of history, among the Oriental nations. There was slavery among the Jews; the theocratic government of that people issued no injunction against it. There was slavery among the Greeks; and the ingenious philosophy of the Greeks found, or sought to find, a justification for it exactly upon the grounds which have been assumed for such a justification in this country; that is, a natural and original difference among the races of mankind, and the inferiority of the black or colored race to the white. The Greeks justified their system of slavery upon that idea precisely. They held the African and some of the Asiatic tribes to be inferior to the white race; but they did not show, I think, by any close process of logic, that, if this were true, the more intelligent and the stronger had therefore a right to subjugate the weaker.

The more manly philosophy and jurisprudence of the Romans placed the justification of slavery on entirely different grounds. The Roman jurists, from the first and down to the fall of the empire, admitted that slavery was against the natural law, by which, as they maintained, all men, of whatsoever clime, color, or capacity, were equal; but they justified slavery, first, upon the ground and authority of the law of nations, arguing, and arguing truly, that at that day the conventional law of nations admitted that captives in war, whose lives, according to the notions of the times, were at the absolute disposal of the captors, might, in exchange for exemption from death, be made slaves for life, and that such servitude might descend to their posterity. The jurists of Rome also maintained, that, by the civil law, there might be servitude or slavery, personal and hereditary; first, by the voluntary act of an individual, who might sell himself into slavery; secondly, by his being reduced into a state of slavery by his creditors, in satisfaction of his debts; and, thirdly, by being placed in a state of servitude or slavery for crime. At the introduction of Christianity, the Roman world was full of slaves, and I suppose there is to be found no injunction against that relation between man and man in the teachings of the Gospel of Jesus Christ or of any of his Apostles. The object of the instruction imparted to mankind by the Founder of Christianity was to touch the heart, purify the soul, and improve the lives of individual men. That object went directly to the first fountain of all the political and social relations of the human race, as well as of all true religious feeling, the individual heart and mind of man.

Now, sir, upon the general nature and influence of slavery there exists a wide difference of opinion between

the northern portion of this country and the southern. It is said on the one side, that, although not the subject of any injunction or direct prohibition in the New Testament, slavery is a wrong; that it is founded merely in the right of the strongest; and that it is an oppression, like unjust wars, like all those conflicts by which a powerful nation subjects a weaker to its will; and that, in its nature, whatever may be said of it in the modifications which have taken place, it is not according to the meek spirit of the Gospel. It is not "kindly affectioned"; it does not "seek another's, and not its own"; it does not "let the oppressed go free." These are sentiments that are cherished, and of late with greatly augmented force, among the people of the Northern States. They have taken hold of the religious sentiment of that part of the country, as they have, more or less, taken hold of the religious feelings of a considerable portion of mankind. The South, upon the other side, having been accustomed to this relation between the two races all their lives, from their birth, having been taught, in general, to treat the subjects of this bondage with care and kindness, and I believe, in general, feeling great kindness for them, have not taken the view of the subject which I have mentioned. There are thousands of religious men, with consciences as tender as any of their brethren at the North, who do not see the unlawfulness of slavery; and there are more thousands, perhaps, that, whatsoever they may think of it in its origin, and as a matter depending upon natural right, yet take things as they are, and, finding slavery to be an established relation of the society in which they live, can see no way in which, let their opinions on the abstract question be what they may, it is in the power of the present generation to relieve themselves from this

relation. And candor obliges me to say, that I believe they are just as conscientious, many of them, and the religious people, all of them, as they are at the North who hold different opinions.

The honorable Senator from South Carolina the other day alluded to the separation of that great religious community, the Methodist Episcopal Church. That separation was brought about by differences of opinion upon this particular subject of slavery. I felt great concern, as that dispute went on, about the result. I was in hopes that the difference of opinion might be adjusted, because I looked upon that religious denomination as one of the great props of religion and morals throughout the whole country, from Maine to Georgia, and westward to our utmost western boundary. The result was against my wishes and against my hopes. I have read all their proceedings and all their arguments; but I have never yet been able to come to the conclusion that there was any real ground for that separation; in other words, that any good could be produced by that separation. I must say I think there was some want of candor and charity. Sir, when a question of this kind seizes on the religious sentiments of mankind, and comes to be discussed in religious assemblies of the clergy and laity, there is always to be expected, or always to be feared, a great degree of excitement. It is in the nature of man, manifested by his whole history, that religious disputes are apt to become warm in proportion to the strength of the convictions which men entertain of the magnitude of the questions at issue. In all such disputes, there will sometimes be found men with whom everything is absolute; absolutely wrong, or absolutely right. They see the right clearly; they think others ought so to see it, and they are

disposed to establish a broad line of distinction between what is right and what is wrong. They are not seldom willing to establish that line upon their own convictions of truth and justice; and are ready to mark and guard it by placing along it a series of dogmas, as lines of boundary on the earth's surface are marked by posts and stones. There are men who, with clear perceptions, as they think, of their own duty, do not see how too eager a pursuit of one duty may involve them in the violation of others, or how too warm an embracement of one truth may lead to a disregard of other truths equally important. As I heard it stated strongly, not many days ago, these persons are disposed to mount upon some particular duty, as upon a war-horse, and to drive furiously on and upon and over all other duties that may stand in the way. There are men who, in reference to disputes of that sort, are of opinion that human duties may be ascertained with the exactness of mathematics. They deal with morals as with mathematics; and they think what is right may be distinguished from what is wrong with the precision of an algebraic equation. They have, therefore, none too much charity toward others who differ from them. They are apt, too, to think that nothing is good but what is perfect, and that there are no compromises or modifications to be made in consideration of difference of opinion or in deference to other men's judgment. If their perspicacious vision enables them to detect a spot on the face of the sun, they think that a good reason why the sun should be struck down from heaven. They prefer the chance of running into utter darkness to living in heavenly light, if that heavenly light be not absolutely without any imperfection. There are impatient men; too impatient always to give heed to the admonition of St.

Paul, that we are not to "do evil that good may come"; too impatient to wait for the slow progress of moral causes in the improvement of mankind. They do not remember that the doctrines and the miracles of Jesus Christ have, in eighteen hundred years, converted only a small portion of the human race; and among the nations that are converted to Christianity, they forget how many vices and crimes, public and private, still prevail, and that many of them, public crimes especially, which are so clearly offences against the Christian religion, pass without exciting particular indignation. Thus wars are waged, and unjust wars. I do not deny that there may be just wars. There certainly are; but it was the remark of an eminent person, not many years ago, on the other side of the Atlantic, that it is one of the greatest reproaches to human nature that wars are sometimes just. The defence of nations sometimes causes a just war against the injustice of other nations. In this state of sentiment upon the general nature of slavery lies the cause of a great part of those unhappy divisions, exasperations, and reproaches which find vent and support in different parts of the Union.

But we must view things as they are. Slavery does exist in the United States. It did exist in the States before the adoption of this Constitution, and at that time. Let us, therefore, consider for a moment what was the state of sentiment, North and South, in regard to slavery, at the time this Constitution was adopted. A remarkable change has taken place since; but what did the wise and great men of all parts of the country think of slavery then? In what estimation did they hold it at the time when this Constitution was adopted? It will be found, sir, if we will carry ourselves by historical research back to that day, and

ascertain men's opinions by authentic records still existing among us, that there was then no diversity of opinion between the North and the South upon the subject of slavery. It will be found that both parts of the country held it equally an evil—a moral and political evil. It will not be found that, either at the North or at the South, there was much, though there was some, invective against slavery as inhuman and cruel. The great ground of objection to it was political; that it weakened the social fabric; that, taking the place of free labor, society became less strong and labor less productive; and therefore we find from all the eminent men of the time the clearest expression of their opinion that slavery is an evil. They ascribed its existence here, not without truth, and not without some acerbity of temper and force of language, to the injurious policy of the mother country, who, to favor the navigator, had entailed these evils upon the Colonies. I need hardly refer, sir, particularly to the publications of the day. They are matters of history on the record. The eminent men, the most eminent men, and nearly all the conspicuous politicians of the South held the same sentiments—that slavery was an evil, a blight, a scourge, and a curse. There are no terms of reprobation of slavery so vehement in the North at that day as in the South. The North was not so much excited against it as the South; and the reason is, I suppose, that there was much less of it at the North, and the people did not see, or think they saw, the evils so prominently as they were seen, or thought to be seen, at the South.

Then, sir, when this Constitution was framed, this was the light in which the Federal Convention viewed it. That body reflected the judgment and sentiments of the great men

of the South. A member of the other House, whom I have not the honor to know, has, in a recent speech, collected extracts from these public documents. They prove the truth of what I am saying, and the question then was, how to deal with it, and how to deal with it as an evil. They came to this general result. They thought that slavery could not be continued in the country if the importation of slaves was made to cease, and therefore they provided that, after a certain period, the importation might be prevented by the act of the new government. The period of twenty years was proposed by some gentleman from the North, I think, and many members of the Convention from the South opposed it as being too long. Mr. Madison especially was somewhat warm against it. He said it would bring too much of this mischief into the country to allow the importation of slaves for such a period. Because we must take along with us, in the whole of this discussion, when we are considering the sentiments and opinions in which the constitutional provision originated, that the conviction of all men was, that, if the importation of slaves ceased, the white race would multiply faster than the black race, and that slavery would therefore gradually wear out and expire. It may not be improper here to allude to that, I had almost said, celebrated opinion of Mr. Madison. You observe, sir, that the term slave, or slavery, is not used in the Constitution. The Constitution does not require that "fugitive slaves" shall be delivered up. It requires that persons held to service in one State, and escaping into another, shall be delivered up. Mr. Madison opposed the introduction of the term slave, or slavery, into the Constitution; for he said that he did not wish to see it recognized by the Constitution of the

United States of America that there could be property in men.

Now, sir, all this took place in the Convention in 1787; but connected with this, concurrent and contemporaneous, is another important transaction, not sufficiently attended to. The Convention for framing this Constitution assembled in Philadelphia in May, and sat until September, 1787. During all that time the Congress of the United States was in session at New York. It was a matter of design, as we know, that the Convention should not assemble in the same city where Congress was holding its sessions. Almost all the public men of the country, therefore, of distinction and eminence, were in one or the other of these two assemblies; and I think it happened, in some instances, that the same gentlemen were members of both bodies. If I mistake not, such was the case with Mr. Rufus King, then a member of Congress from Massachusetts. Now, at the very time when the Convention in Philadelphia was framing this Constitution, the Congress in New York was framing the Ordinance of 1787, for the organization and government of the territory northwest of the Ohio. They passed that Ordinance on the 13th of July, 1787, at New York, the very month, perhaps the very day, on which these questions about the importation of slaves and the character of slavery were debated in the Convention at Philadelphia. So far as we can now learn, there was a perfect concurrence of opinion between these two bodies; and it resulted in this Ordinance of 1787, excluding slavery from all the territory over which the Congress of the United States had jurisdiction, and that was all the territory northwest of the Ohio. Three years before, Virginia and other States had made a cession of that

great territory to the United States; and a most munificent act it was. I never reflect upon it without a disposition to do honor and justice, and justice would be the highest honor, to Virginia, for the cession of her northwestern territory. I will say, sir, it is one of her fairest claims to the respect and gratitude of the country, and that, perhaps, it is only second to that other claim which belongs to her—that from her counsels, and from the intelligence and patriotism of her leading statesmen, proceeded the first idea put into practice of the formation of a general Constitution of the United States. The Ordinance of 1787 applied to the whole territory over which the Congress of the United States had jurisdiction. It was adopted two years before the Constitution of the United States went into operation; because the Ordinance took effect immediately on its passage, while the Constitution of the United States, having been framed, was to be sent to the States to be adopted by their conventions; and then a government was to be organized under it. This Ordinance, then, was in operation and force when the Constitution was adopted, and the government put in motion, in April, 1789.

Mr. President, three things are quite clear as historical truths. One is, that there was an expectation that, on the ceasing of the importation of slaves from Africa, slavery would begin to run out here. That was hoped and expected. Another is, that, as far as there was any power in Congress to prevent the spread of slavery in the United States, that power was executed in the most absolute manner, and to the fullest extent. An honorable member [Mr. Calhoun], whose health does not allow him to be here to-day—

A Senator.—He is here.

I am very happy to hear that he is; may he long be here, and in the enjoyment of health to serve his country! The honorable member said, the other day, that he considered this Ordinance as the first in the series of measures calculated to enfeeble the South, and deprive them of their just participation in the benefits and privileges of this government. He says, very properly, that it was enacted under the old Confederation, and before this Constitution went into effect; but my present purpose is only to say, Mr. President, that it was established with the entire and unanimous concurrence of the whole South. Why, there it stands! The vote of every State in the Union was unanimous in favor of the Ordinance, with the exception of a single individual vote, and that individual vote was given by a Northern man. This Ordinance prohibiting slavery forever northwest of the Ohio has the hand and seal of every Southern member in Congress. It was therefore no aggression of the North on the South. The other and third clear historical truth is, that the Convention meant to leave slavery in the States as they found it, entirely under the authority and control of the States themselves.

This was the state of things, sir, and this the state of opinion, under which those very important matters were arranged, and those three important things done; that is, the establishment of the Constitution of the United States with a recognition of slavery as it existed in the States; the establishment of the ordinance for the government of the Northwestern Territory, prohibiting, to the full extent of all territory owned by the United States, the introduction of slavery into that territory, while leaving to the States all power over slavery in their own limits; and creating a power, in the new government, to put an end

to the importation of slaves, after a limited period. There was entire coincidence and concurrence of sentiment between the North and South, upon all these questions, at the period of the adoption of the Constitution. But opinions, sir, have changed, greatly changed; changed North and changed South. Slavery is not regarded in the South now as it was then. I see an honorable member of this body paying me the honor of listening to my remarks; he brings to my mind, sir, freshly and vividly, what I have learned of his great ancestor, so much distinguished in his day and generation, so worthy to be succeeded by so worthy a grandson, and of the sentiments he expressed in the Convention in Philadelphia.

Here we may pause. There was, if not an entire unanimity, a general concurrence of sentiment running through the whole community, and especially entertained by the eminent men of all parts of the country. But soon a change began, at the North and the South, and a difference of opinion showed itself; the North growing much more warm and strong against slavery, and the South growing much more warm and strong in its support. Sir, there is no generation of mankind whose opinions are not subject to be influenced by what appear to them to be their present emergent and exigent interests. I impute to the South no particularly selfish view in the change which has come over her. I impute to her certainly no dishonest view. All that has happened has been natural. It has followed those causes which always influence the human mind and operate upon it. What, then, have been the causes which have created so new a feeling in favor of slavery in the South, which have changed the whole nomenclature of the South on that subject, so that, from

being thought and described in the terms I have mentioned and will not repeat, it has now become an institution, a cherished institution, in that quarter; no evil, no scourge, but a great religious, social, and moral blessing, as I think I have heard it latterly spoken of? I suppose this, sir, is owing to the rapid growth and sudden extension of the cotton plantations of the South. So far as any motive consistent with honor, justice, and general judgment could act, it was the cotton interest that gave a new desire to promote slavery, to spread it, and to use its labor. I again say that this change was produced by causes which must always produce like effects. The whole interest of the South became connected, more or less, with the extension of slavery. If we look back to the history of the commerce of this country in the early years of this government, what were our exports? Cotton was hardly, or but to a very limited extent, known. In 1791 the first parcel of cotton of the growth of the United States was exported, and amounted only to 19,200 pounds. It has gone on increasing rapidly, until the whole crop may now, perhaps, in a season of great product and high prices, amount to a hundred millions of dollars. In the years I have mentioned, there was more of wax, more of indigo, more of rice, more of almost every article of export from the South, than of cotton. When Mr. Jay negotiated the treaty of 1794 with England, it is evident from the twelfth article of the treaty, which was suspended by the Senate, that he did not know that cotton was exported at all from the United States.

Well, sir, we know what followed. The age of cotton became the golden age of our Southern brethren. It gratified their desire for improvement and accumulation, at the same time that it excited it. The desire grew by what it

fed upon, and there soon came to be an eagerness for other territory, a new area or new areas for the cultivation of the cotton crop; and measures leading to this result were brought about rapidly, one after another, under the lead of Southern men at the head of the government, they having a majority in both branches of Congress to accomplish their ends. The honorable member from South Carolina observed that there has been a majority all along in favor of the North. If that be true, sir, the North has acted either very liberally and kindly, or very weakly; for they never exercised that majority efficiently five times in the history of the government, when a division or trial of strength arose. Never. Whether they were outgeneralled, or whether it was owing to other causes, I shall not stop to consider; but no man acquainted with the history of the Union can deny that the general lead in the politics of the country, for three-fourths of the period that has elapsed since the adoption of the Constitution, has been a Southern lead.

In 1802, in pursuit of the idea of opening a new cotton region, the United States obtained a cession from Georgia of the whole of her western territory, now embracing the rich and growing States of Alabama and Mississippi. In 1803 Louisiana was purchased from France, out of which the States of Louisiana, Arkansas, and Missouri have been framed, as slaveholding States. In 1819 the cession of Florida was made, bringing in another region adapted to cultivation by slaves. Sir, the honorable member from South Carolina thought he saw in certain operations of the government, such as the manner of collecting the revenue, and the tendency of measures calculated to promote emigration into the country, what accounts for the more rapid growth of the North than the South. He as-

cribes that more rapid growth, not to the operation of time, but to the system of government and administration established under this Constitution. That is matter of opinion. To a certain extent it may be true; but it does seem to me that, if any operation of the government can be shown in any degree to have promoted the population, and growth, and wealth of the North, it is much more sure that there are sundry important and distinct operations of the government, about which no man can doubt, tending to promote, and which absolutely have promoted, the increase of the slave interest and the slave territory of the South. It was not time that brought in Louisiana; it was the act of men. It was not time that brought in Florida; it was the act of men. And lastly, sir, to complete those acts of legislation which have contributed so much to enlarge the area of the institution of slavery, Texas, great and vast and illimitable Texas, was added to the Union as a slave State in 1845; and that, sir, pretty much closed the whole chapter, and settled the whole account.

That closed the whole chapter and settled the whole account, because the annexation of Texas, upon the conditions and under the guarantees upon which she was admitted, did not leave within the control of this government an acre of land, capable of being cultivated by slave labor, between this Capitol and the Rio Grande or the Nueces, or whatever is the proper boundary of Texas; not an acre. From that moment, the whole country, from this place to the western boundary of Texas, was fixed, pledged, fastened, decided, to be slave territory forever, by the solemn guarantees of law. And I now say, sir, as the proposition upon which I stand this day, and upon the truth and firmness of which I intend to act until it is overthrown, that there is not at

this moment within the United States, or any Territory of the United States, a single foot of land, the character of which, in regard to its being free territory or slave territory, is not fixed by some law, and some irrepealable law, beyond the power of the action of the government. Is it not so with respect to Texas? It is most manifestly so. The honorable member from South Carolina, at the time of the admission of Texas, held an important post in the executive department of the government; he was Secretary of State. Another eminent person of great activity and adroitness in affairs, I mean the late Secretary of the Treasury, was a conspicuous member of this body, and took the lead in the business of annexation, in co-operation with the Secretary of State; and I must say that they did their business faithfully and thoroughly; there was no botch left in it. They rounded it off, and made as close joiner-work as ever was exhibited. Resolutions of annexation were brought into Congress, fitly joined together, compact, efficient, conclusive upon the great object which they had in view, and those resolutions passed.

Allow me to read a part of these resolutions. It is the third clause of the second section of the resolution of the 1st of March, 1845, for the admission of Texas, which applies to this part of the case. That clause is as follows:

"New States, of convenient size, not exceeding four in number, in addition to said State of Texas, and having sufficient population, may hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the Federal Constitution. And such States as may be formed out of that portion of said territory lying south of thirty-six degrees thirty minutes north latitude, commonly known

as the Missouri Compromise line, shall be admitted into the Union with or without slavery, as the people of each State asking admission may desire; and in such State or States as shall be formed out of said territory north of said Missouri Compromise line, slavery or involuntary servitude (except for crime) shall be prohibited."

Now what is here stipulated, enacted, and secured? It is, that all Texas south of 36° 30′, which is nearly the whole of it, shall be admitted into the Union as a slave State. It was a slave State, and therefore came in as a slave State; and the guarantee is, that new States shall be made out of it, to the number of four, in addition to the State then in existence and admitted at that time by these resolutions, and that such States as are formed out of that portion of Texas lying south of 36° 30′ may come in as slave States. I know no form of legislation which can strengthen this. I know no mode of recognition that can add a tittle of weight to it. I listened respectfully to the resolutions of my honorable friend from Tennessee. He proposed to recognize that stipulation with Texas. But any additional recognition would weaken the force of it; because it stands here on the ground of a contract, a thing done for a consideration. It is a law founded on a contract with Texas, and designed to carry that contract into effect. A recognition now, founded not on any consideration, or any contract, would not be so strong as it now stands on the face of the resolution. I know no way, I candidly confess, in which this government, acting in good faith, as I trust it always will, can relieve itself from that stipulation and pledge, by any honest course of legislation whatever. And therefore I say again, that, so far as Texas is concerned, in the whole of that State south of 36° 30′, which

I suppose, embraces all the territory capable of slave cultivation, there is no land, not an acre, the character of which is not established by law; a law which cannot be repealed without the violation of a contract, and plain disregard of the public faith.

I hope, sir, it is now apparent that my proposition, so far as it respects Texas, has been maintained, and that the provision in this article is clear and absolute; and it has been well suggested by my friend from Rhode Island, that that part of Texas which lies north of 36° 30′ of north latitude, and which may be formed into free States, is dependent, in like manner, upon the consent of Texas, herself a slave State.

Now, sir, how came this? How came it to pass that within these walls, where it is said by the honorable member from South Carolina that the free States have always had a majority, this resolution of annexation, such as I have described it, obtained a majority in both Houses of Congress? Sir, it obtained that majority by the great number of Northern votes added to the entire Southern vote, or at least nearly the whole of the Southern vote. The aggregate was made up of Northern and Southern votes. In the House of Representatives there were about eighty Southern votes and about fifty Northern votes for the admission of Texas. In the Senate the vote for the admission of Texas was twenty-seven, and twenty-five against it; and of those twenty-seven votes, constituting the majority, no less than thirteen came from the free States, and four of them were from New England. The whole of these thirteen Senators, constituting within a fraction, you see, one-half of all the votes in this body for the admission of this immeasurable extent of slave territory, were sent here by free States.

Sir, there is not so remarkable a chapter in our history of political events, political parties, and political men as is afforded by this admission of a new slaveholding Territory, so vast that a bird cannot fly over it in a week. New England, as I have said, with some of her own votes, supported this measure. Three-fourths of the votes of liberty-loving Connecticut were given for it in the other House, and one-half here. There was one vote for it from Maine, but I am happy to say, not the vote of the honorable member who addressed the Senate the day before yesterday, and who was then a Representative from Maine in the House of Representatives; but there was one vote from Maine, aye, and there was one vote for it from Massachusetts, given by a gentleman then representing, and now living in, the district in which the prevalence of Free Soil sentiment for a couple of years or so has defeated the choice of any member to represent it in Congress. Sir, that body of Northern and Eastern men who gave those votes at that time are now seen taking upon themselves, in the nomenclature of politics, the appellation of the Northern Democracy. They undertook to wield the destinies of this empire, if I may give that name to a republic, and their policy was, and they persisted in it, to bring into this country and under this government all the territory they could. They did it, in the case of Texas, under pledges, absolute pledges, to the slave interest, and they afterward lent their aid in bringing in these new conquests, to take their chance for slavery or freedom. My honorable friend from Georgia, in March, 1847, moved the Senate to declare that the war ought not to be prosecuted for the conquest of territory, or for the dismemberment of Mexico. The whole of the Northern Democracy voted against it. He did not get a vote from them. It

suited the patriotic and elevated sentiments of the Northern Democracy to bring in a world from among the mountains and valleys of California and New Mexico, or any other part of Mexico, and then quarrel about it; to bring it in, and then endeavor to put upon it the saving grace of the Wilmot Proviso. There were two eminent and highly respectable gentlemen from the North and East, then leading gentlemen in the Senate (I refer, and I do so with entire respect, for I entertain for both of those gentlemen, in general, high regard, to Mr. Dix of New York and Mr. Niles of Connecticut), who both voted for the admission of Texas. They would not have that vote any other way than as it stood; and they would have it as it did stand. I speak of the vote upon the annexation of Texas. Those two gentlemen would have the resolution of annexation just as it is, without amendment; and they voted for it just as it is, and their eyes were all open to its true character. The honorable member from South Carolina who addressed us the other day was then Secretary of State. His correspondence with Mr. Murphy, the Chargé d'Affaires of the United States in Texas, had been published. That correspondence was all before those gentlemen, and the Secretary had the boldness and candor to avow in that correspondence, that the great object sought by the annexation of Texas was to strengthen the slave interest of the South. Why, sir, he said so in so many words—

Mr. Calhoun—Will the honorable Senator permit me to interrupt him for a moment?

Certainly.

Mr. Calhoun—I am very reluctant to interrupt the honorable gentleman; but, upon a point of so much importance, I deem it right to put myself *rectus in curia.* I did not put

it upon the ground assumed by the Senator. I put it upon this ground; that Great Britain had announced to this country, in so many words, that her object was to abolish slavery in Texas, and, through Texas, to accomplish the abolition of slavery in the United States and the world. The ground I put it on was, that it would make an exposed frontier, and, if Great Britain succeeded in her object, it would be impossible that that frontier could be secured against the aggressions of the Abolitionists; and that this government was bound, under the guarantees of the Constitution, to protect us against such a state of things.

That comes, I suppose, sir, to exactly the same thing. It was, that Texas must be obtained for the security of the slave interest of the South.

Mr. Calhoun—Another view is very distinctly given.

That was the object set forth in the correspondence of a worthy gentleman not now living, who preceded the honorable member from South Carolina in the Department of State. There repose on the files of the Department, as I have occasion to know, strong letters from Mr. Upshur to the United States Minister in England, and I believe there are some to the same Minister from the honorable Senator himself, asserting to this effect the sentiments of this government; namely, that Great Britain was expected not to interfere to take Texas out of the hands of its then existing government and make it a free country. But my argument, my suggestion, is this: that those gentlemen who composed the Northern Democracy when Texas was brought into the Union saw clearly that it was brought in as a slave country, and brought in for the purpose of being maintained as slave territory, to the Greek Kalends. I rather think the honorable gentleman who was then Secretary of State might, in some of his correspondence with Mr. Murphy, have sug-

gested that it was not expedient to say too much about this object, lest it should create some alarm. At any rate, Mr. Murphy wrote to him that England was anxious to get rid of the Constitution of Texas, because it was a constitution establishing slavery; and that what the United States had to do was to aid the people of Texas in upholding their Constitution; but that nothing should be said which should offend the fanatical men of the North. But, sir, the honorable member did avow this object himself, openly, boldly, and manfully; he did not disguise his conduct or his motives.

Mr. Calhoun—Never, never.

What he means he is very apt to say.

Mr. Calhoun—Always, always.

And I honor him for it.

This admission of Texas was in 1845. Then in 1847, *flagrante bello* between the United States and Mexico, the proposition I have mentioned was brought forward by my friend from Georgia, and the Northern Democracy voted steadily against it. Their remedy was to apply to the acquisitions, after they should come in, the Wilmot Proviso. What follows? These two gentlemen, worthy and honorable and influential men (and if they had not been they could not have carried the measure), these two gentlemen, members of this body, brought in Texas, and by their votes they also prevented the passage of the resolution of the honorable member from Georgia, and then they went home and took the lead in the Free Soil party. And there they stand, sir! They leave us here, bound in honor and conscience by the resolutions of annexation; they leave us here, to take the odium of fulfilling the obligations in favor of slavery

which they voted us into, or else the greater odium of violating those obligations, while they are at home making capital and rousing speeches for free soil and no slavery. And therefore I say, sir, that there is not a chapter in our history, respecting public measures and public men, more full of what would create surprise, more full of what does create in my mind extreme mortification, than that of the conduct of the Northern Democracy on this subject.

Mr. President, sometimes, when a man is found in a new relation to things around him and to other men, he says the world has changed, and that he has not changed. I believe, sir, that our self-respect leads us often to make this declaration in regard to ourselves when it is not exactly true. An individual is more apt to change, perhaps, than all the world around him. But under the present circumstances, and under the responsibility which I know I incur by what I am now stating here, I feel at liberty to recur to the various expressions and statements, made at various times, of my own opinions and resolutions respecting the admission of Texas, and all that has followed. Sir, as early as 1836, or in the early part of 1837, there was conversation and correspondence between myself and some private friends on this project of annexing Texas to the United States; and an honorable gentleman with whom I have had a long acquaintance, a friend of mine, now perhaps in this Chamber, I mean General Hamilton, of South Carolina, was privy to that correspondence. I had voted for the recognition of Texan independence, because I believed it to be an existing fact, surprising and astonishing as it was, and I wished well to the new republic; but I manifested from the first utter opposition to bringing her, with her slave territory, into the Union. I happened, in 1837, to make a public address to

political friends in New York, and I then stated my sentiments upon the subject. It was the first time that I had occasion to advert to it; and I will ask a friend near me to have the kindness to read an extract from the speech made by me on that occasion. It was delivered in Niblo's Saloon, in 1837.

Mr. Greene then read the following extract from the speech of Mr. Webster to which he referred:

"Gentlemen, we all see that, by whomsoever possessed, Texas is likely to be a slaveholding country; and I frankly avow my entire unwillingness to do anything that shall extend the slavery of the African race on this Continent, or add other slaveholding States to the Union. When I say that I regard slavery in itself as a great moral, social, and political evil, I only use language which has been adopted by distinguished men, themselves citizens of slaveholding States. I shall do nothing, therefore, to favor or encourage its further extension. We have slavery already among us. The Constitution found it in the Union; it recognized it, and gave it solemn guarantees. To the full extent of these guarantees we are all bound, in honor, in justice, and by the Constitution. All the stipulations contained in the Constitution in favor of the slaveholding States which are already in the Union ought to be fulfilled, and, so far as depends on me, shall be fulfilled, in the fulness of their spirit, and to the exactness of their letter. Slavery, as it exists in the States, is beyond the reach of Congress. It is a concern of the States themselves; they have never submitted it to Congress, and Congress has no rightful power over it. I shall concur, therefore, in no act, no measure, no menace, no indication of purpose, which shall interfere or threaten to interfere with the exclusive authority of the several States over the subject of slavery as it exists within their respective limits. All this appears to me to be matter of plain and imperative duty.

"But when we come to speak of admitting new States,

the subject assumes an entirely different aspect. Our rights and our duties are then both different. . . .

"I see, therefore, no political necessity for the annexation of Texas to the Union; no advantages to be derived from it; and objections to it of a strong, and, in my judgment, decisive character."

I have nothing, sir, to add to, or to take from, those sentiments. That speech, the Senate will perceive, was made in 1837. The purpose of immediately annexing Texas at that time was abandoned or postponed; and it was not revived with any vigor for some years. In the meantime it happened that I had become a member of the executive administration, and was for a short period in the Department of State. The annexation of Texas was a subject of conversation, not confidential, with the President and heads of departments, as well as with other public men. No serious attempt was then made, however, to bring it about. I left the Department of State in May, 1843, and shortly after I learned, though by means which were no way connected with official information, that a design had been taken up of bringing Texas, with her slave territory and population, into this Union. I was in Washington at the time, and persons are now here who will remember that we had an arranged meeting for conversation upon it. I went home to Massachusetts and proclaimed the existence of that purpose, but I could get no audience and but little attention. Some did not believe it, and some were too much engaged in their own pursuits to give it any heed. They had gone to their farms or to their merchandise, and it was impossible to arouse any feeling in New England, or in Massachusetts, that should combine the two great political parties against this annexation; and, indeed, there was no hope of bringing

the Northern Democracy into that view, for their leaning was all the other way. But, sir, even with Whigs, and leading Whigs, I am ashamed to say, there was a great indifference toward the admission of Texas, with slave territory, into this Union.

The project went on. I was then out of Congress. The annexation resolutions passed on the 1st of March, 1845; the Legislature of Texas complied with the conditions and accepted the guarantees; for the language of the resolution is, that Texas is to come in "upon the conditions and under the guarantees herein prescribed." I was returned to the Senate in March, 1845, and was here in December following, when the acceptance by Texas of the conditions proposed by Congress was communicated to us by the President, and an act for the consummation of the union was laid before the two Houses. The connection was then not completed. A final law, doing the deed of annexation ultimately, had not been passed; and when it was put upon its final passage here, I expressed my opposition to it, and recorded my vote in the negative; and there that vote stands, with the observations that I made upon that occasion. Nor is this the only occasion on which I have expressed myself to the same effect. It has happened that, between 1837 and this time, on various occasions, I have expressed my entire opposition to the admission of slave States, or the acquisition of new slave territories, to be added to the United States. I know, sir, no change in my own sentiments, or my own purposes, in that respect. I will now ask my friend from Rhode Island to read another extract from a speech of mine made at a Whig convention in Springfield, Massachusetts, in the month of September, 1847.

Mr. Greene here read the following extract:

"We hear much just now of a panacea for the dangers and evils of slavery and slave annexation, which they call the 'Wilmot Proviso.' That certainly is a just sentiment, but it is not a sentiment to found any new party upon. It is not a sentiment on which Massachusetts Whigs differ. There is not a man in this hall who holds to it more firmly than I do, nor one who adheres to it more than another.

"I feel some little interest in this matter, sir. Did I not commit myself in 1837 to the whole doctrine, fully, entirely? And I must be permitted to say that I cannot quite consent that more recent discoverers should claim the merit and take out a patent.

"I deny the priority of their invention. Allow me to say, sir, it is not their thunder. . . .

"We are to use the first and the last and every occasion which offers to oppose the extension of slave power.

"But I speak of it here, as in Congress, as a political question, a question for statesmen to act upon. We must so regard it. I certainly do not mean to say that it is less important in a moral point of view, that it is not more important in many other points of view; but as a legislator, or in any official capacity, I must look at it, consider it, and decide it as a matter of political action."

On other occasions, in debates here, I have expressed my determination to vote for no acquisition, cession, or annexation, north or south, east or west. My opinion has been, that we have territory enough, and that we should follow the Spartan maxim, "Improve, adorn what you have," seek no further. I think that it was in some observations that I made on the three-million loan bill that I avowed this sentiment. In short, sir, it has been avowed quite as often, in as many places, and before as many assemblies, as any humble opinions of mine ought to be avowed.

But now that, under certain conditions, Texas is in the Union, with all her territory, as a slave State, with a solemn pledge, also, that, if she shall be divided into many States, those States may come in as slave States south of 36° 30′, how are we to deal with this subject? I know no way of honest legislation, when the proper time comes for the enactment, but to carry into effect all that we have stipulated to do. I do not entirely agree with my honorable friend from Tennessee, that, as soon as the time comes when she is entitled to another Representative, we should create a new State. On former occasions, in creating new States out of Territories, we have generally gone upon the idea that, when the population of the Territory amounts to about sixty thousand, we would consent to its admission as a State. But it is quite a different thing when a State is divided, and two or more States made out of it. It does not follow in such a case that the same rule of apportionment should be applied. That, however, is a matter for the consideration of Congress, when the proper time arrives. I may not then be here; I may have no vote to give on the occasion; but I wish it to be distinctly understood, that, according to my view of the matter, this government is solemnly pledged, by law and contract, to create new States out of Texas, with her consent, when her population shall justify and call for such a proceeding, and, so far as such States are formed out of Texan territory lying south of 36° 30′, to let them come in as slave States. That is the meaning of the contract which our friends, the Northern Democracy, have left us to fulfil; and I, for one, mean to fulfil it, because I will not violate the faith of the government. What I mean to say is, that the time for the admission of new States formed out of Texas, the number of

such States, their boundaries, the requisite amount of population, and all other things connected with the admission, are in the free discretion of Congress, except this, to wit, that, when new States formed out of Texas are to be admitted, they have a right, by legal stipulation and contract, to come in as slave States.

Now, as to California and New Mexico, I hold slavery to be excluded from those Territories by a law even superior to that which admits and sanctions it in Texas. I mean the law of nature, of physical geography, the law of the formation of the earth. That law settles forever, with a strength beyond all terms of human enactment, that slavery cannot exist in California or New Mexico. Understand me, sir; I mean slavery as we regard it; the slavery of the colored race as it exists in the Southern States. I shall not discuss the point, but leave it to the learned gentlemen who have undertaken to discuss it; but I suppose there is no slavery of that description in California now. I understand that *peonism*, a sort of penal servitude, exists there, or rather a sort of voluntary sale of a man and his offspring for debt, an arrangement of a peculiar nature known to the law of Mexico. But what I mean to say is, that it is as impossible that African slavery, as we see it among us, should find its way, or be introduced, into California and New Mexico, as any other natural impossibility. California and New Mexico are Asiatic in their formation and scenery. They are composed of vast ridges of mountains, of great height, with broken ridges and deep valleys. The sides of these mountains are entirely barren; their tops capped by perennial snow. There may be in California, now made free by its Constitution, and no doubt there are, some tracts of valuable land. But it is not so in New Mexico. Pray,

what is the evidence which every gentleman must have obtained on this subject, from information sought by himself or communicated by others? I have inquired and read all I could find, in order to acquire information on this important subject. What is there in New Mexico that could, by any possibility, induce anybody to go there with slaves? There are some narrow strips of tillable land on the borders of the rivers; but the rivers themselves dry up before midsummer is gone. All that the people can do in that region is to raise some little articles, some little wheat for their *tortillas*, and that by irrigation. And who expects to see a hundred black men cultivating tobacco, corn, cotton, rice, or anything else, on lands in New Mexico, made fertile only by irrigation?

I look upon it, therefore, as a fixed fact, to use the current expression of the day, that both California and New Mexico are destined to be free, so far as they are settled at all, which I believe, in regard to New Mexico, will be but partially for a great length of time; free by the arrangement of things ordained by the Power above us. I have therefore to say, in this respect also, that this country is fixed for freedom, to as many persons as shall ever live in it, by a less repealable law than that which attaches to the right of holding slaves in Texas; and I will say further, that, if a resolution or a bill were now before us, to provide a Territorial government for New Mexico, I would not vote to put any prohibition into it whatever. Such a prohibition would be idle, as it respects any effect it would have upon the Territory; and I would not take pains uselessly to reaffirm an ordinance of nature, nor to re-enact the will of God. I would put in no Wilmot Proviso for the mere purpose of a taunt or a reproach. I would put into it no

evidence of the votes of superior power, exercised for no purpose but to wound the pride, whether a just and a rational pride, or an irrational pride, of the citizens of the Southern States. I have no such object, no such purpose. They would think it a taunt, an indignity; they would think it to be an act taking away from them what they regard as a proper equality of privilege. Whether they expect to realize any benefit from it or not, they would think it at least a plain theoretic wrong; that something more or less derogatory to their character and their rights had taken place. I propose to inflict no such wound upon anybody, unless something essentially important to the country, and efficient to the preservation of liberty and freedom, is to be effected. I repeat, therefore, sir, and, as I do not propose to address the Senate often on this subject, I repeat it because I wish it to be distinctly understood, that, for the reasons stated, if a proposition were now here to establish a government for New Mexico, and it was moved to insert a provision for a prohibition of slavery, I would not vote for it.

Sir, if we were now making a government for New Mexico, and anybody should propose a Wilmot Proviso, I should treat it exactly as Mr. Polk treated that provision for excluding slavery from Oregon. Mr. Polk was known to be in opinion decidedly averse to the Wilmot Proviso; but he felt the necessity of establishing a government for the Territory of Oregon. The proviso was in the bill, but he knew it would be entirely nugatory; and, since it must be entirely nugatory, since it took away no right, no describable, no tangible, no appreciable right of the South, he said he would sign the bill for the sake of enacting a law to form a government in that Territory, and let that entirely

useless, and, in that connection, entirely senseless, proviso remain. Sir, we hear occasionally of the annexation of Canada; and if there be any man, any of the Northern Democracy, or any one of the Free Soil party, who supposes it necessary to insert a Wilmot Proviso in a territorial government for New Mexico, that man would of course be of opinion that it is necessary to protect the everlasting snows of Canada from the foot of slavery by the same overspreading wing of an act of Congress. Sir, wherever there is a substantive good to be done, wherever there is a foot of land to be prevented from becoming slave territory, I am ready to assert the principle of the exclusion of slavery. I am pledged to it from the year 1837; I have been pledged to it again and again; and I will perform those pledges; but I will not do a thing unnecessarily that wounds the feelings of others, or that does discredit to my own understanding.

Now, Mr. President, I have established, so far as I proposed to do so, the proposition with which I set out, and upon which I intend to stand or fall; and that is, that the whole territory within the former United States, or in the newly acquired Mexican provinces, has a fixed and settled character, now fixed and settled by law which cannot be repealed—in the case of Texas without a violation of public faith, and by no human power in regard to California or New Mexico; that, therefore, under one or other of these laws, every foot of land in the States or in the Territories has already received a fixed and decided character.

Mr. President, in the excited times in which we live, there is found to exist a state of crimination and recrimination between the North and South. There are lists of

grievances produced by each, and those grievances, real or supposed, alienate the minds of one portion of the country from the other, exasperate the feelings, and subdue the sense of fraternal affection, patriotic love, and mutual regard. I shall bestow a little attention, sir, upon these various grievances existing on the one side and on the other. I begin with complaints of the South. I will not answer, further than I have, the general statements of the honorable Senator from South Carolina, that the North has prospered at the expense of the South in consequence of the manner of administering this government, in the collecting of its revenues, and so forth. These are disputed topics, and I have no inclination to enter into them. But I will allude to other complaints of the South, and especially to one which has in my opinion just foundation; and that is, that there has been found at the North, among individuals and among legislators, a disinclination to perform fully their constitutional duties in regard to the return of persons bound to service who have escaped into the free States. In that respect, the South, in my judgment, is right, and the North is wrong. Every member of every Northern Legislature is bound by oath, like every other officer in the country, to support the Constitution of the United States; and the article of the Constitution which says to these States that they shall deliver up fugitives from service is as binding in honor and conscience as any other article. No man fulfils his duty in any Legislature who sets himself to find excuses, evasions, escapes from this Constitutional obligation. I have always thought that the Constitution addressed itself to the Legislatures of the States or to the States themselves. It says that those persons escaping to other States "shall be delivered up," and I confess I have

always been of the opinion that it was an injunction upon the States themselves. When it is said that a person escaping into another State, and coming therefore within the jurisdiction of that State, shall be delivered up, it seems to me the import of the clause is, that the State itself, in obedience to the Constitution, shall cause him to be delivered up. That is my judgment. I have always entertained that opinion, and I entertain it now. But when the subject, some years ago, was before the Supreme Court of the United States the majority of the judges held that the power to cause fugitives from service to be delivered up was a power to be exercised under the authority of this government. I do not know, on the whole, that it may not have been a fortunate decision. My habit is to respect the result of judicial deliberations and the solemnity of judicial decisions. As it now stands, the business of seeing that these fugitives are delivered up resides in the power of Congress and the national judicature, and my friend at the head of the Judiciary Committee has a bill on the subject now before the Senate, which, with some amendments to it, I propose to support, with all its provisions, to the fullest extent. And I desire to call the attention of all sober-minded men at the North, of all conscientious men, of all men who are not carried away by some fanatical idea or some false impression, to their Constitutional obligations. I put it to all the sober and sound minds at the North as a question of morals and a question of conscience. What right have they, in their legislative capacity or any other capacity, to endeavor to get round this Constitution, or to embarrass the free exercise of the rights secured by the Constitution to the persons whose slaves escape from them? None at all; none at all. Neither in the forum of con-

science, nor before the face of the Constitution, are they, in my opinion, justified in such an attempt. Of course it is a matter for their consideration. They probably, in the excitement of the times, have not stopped to consider of this. They have followed what seemed to be the current of thought and of motives, as the occasion arose, and they have neglected to investigate fully the real question, and to consider their Constitutional obligations; which, I am sure, if they did consider, they would fulfil with alacrity. I repeat, therefore, sir, that here is a well-founded ground of complaint against the North, which ought to be removed, which it is now in the power of the different departments of this government to remove; which calls for the enactment of proper laws authorizing the judicature of this government, in the several States, to do all that is necessary for the recapture of fugitive slaves and for their restoration to those who claim them. Wherever I go, and whenever I speak on the subject, and when I speak here I desire to speak to the whole North, I say that the South has been injured in this respect, and has a right to complain; and the North has been too careless of what I think the Constitution peremptorily and emphatically enjoins upon her as a duty.

Complaint has been made against certain resolutions that emanate from Legislatures at the North, and are sent here to us, not only on the subject of slavery in this District, but sometimes recommending Congress to consider the means of abolishing slavery in the States. I should be sorry to be called upon to present any resolutions here which could not be referable to any committee or any power in Congress; and therefore I should be unwilling to receive from the Legislature of Massachusetts any in-

structions to present resolutions expressive of any opinion whatever on the subject of slavery, as it exists at the present moment in the States, for two reasons: first, because I do not consider that the Legislature of Massachusetts has anything to do with it; and next, because I do not consider that I, as her representative here, have anything to do with it. It has become, in my opinion, quite too common; and if the Legislatures of the States do not like that opinion, they have a great deal more power to put it down than I have to uphold it; it has become, in my opinion, quite too common a practice for the State Legislatures to present resolutions here on all subjects and to instruct us on all subjects. There is no public man that requires instruction more than I do, or who requires information more than I do, or desires it more heartily; but I do not like to have it in too imperative a shape. I took notice, with pleasure, of some remarks made upon this subject, the other day, in the Senate of Massachusetts, by a young man of talent and character, of whom the best hopes may be entertained. I mean Mr. Hillard. He told the Senate of Massachusetts that he would vote for no instructions whatever to be forwarded to members of Congress, nor for any resolutions to be offered expressive of the sense of Massachusetts as to what her members of Congress ought to do. He said that he saw no propriety in one set of public servants giving instructions and reading lectures to another set of public servants. To his own master each of them must stand or fall, and that master is his constituents. I wish these sentiments could become more common. I have never entered into the question, and never shall, as to the binding force of instructions. I will, however, simply say this: if there be any matter pending in this body, while

I am a member of it, in which Massachusetts has an interest of her own not adverse to the general interests of the country, I shall pursue her instructions with gladness of heart and with all the efficiency which I can bring to the occasion. But if the question be one which affects her interest, and, at the same time equally affects the interests of all the other States, I shall no more regard her particular wishes or instructions than I should regard the wishes of a man who might appoint me an arbitrator or referee to decide some question of important private right between him and his neighbor, and then instruct me to decide in his favor. If ever there was a government upon earth it is this government, if ever there was a body upon earth it is this body, which should consider itself as composed by agreement of all, each member appointed by some, but organized by the general consent of all sitting here, under the solemn obligations of oath and conscience, to do that which they think to be best for the good of the whole.

Then, sir, there are the Abolition societies, of which I am unwilling to speak, but in regard to which I have very clear notions and opinions. I do not think them useful. I think their operations for the last twenty years have produced nothing good or valuable. At the same time, I believe thousands of their members to be honest and good men, perfectly well-meaning men. They have excited feelings; they think they must do something for the cause of liberty; and, in their sphere of action, they do not see what else they can do than to contribute to an Abolition press, or an Abolition society, or to pay an Abolition lecturer. I do not mean to impute gross motives even to the leaders of these societies; but I am not blind to the consequences of their proceedings. I cannot but

see what mischiefs their interference with the South has produced. And is it not plain to every man? Let any gentleman who entertains doubts on this point recur to the debates in the Virginia House of Delegates in 1832, and he will see with what freedom a proposition made by Mr. Jefferson Randolph for the gradual abolition of slavery was discussed in that body. Every one spoke of slavery as he thought; very ignominious and disparaging names and epithets were applied to it. The debates in the House of Delegates on that occasion, I believe, were all published. They were read by every colored man who could read; and to those who could not read, those debates were read by others. At that time Virginia was not unwilling or afraid to discuss this question, and to let that part of her population know as much of the discussion as they could learn. That was in 1832. As has been said by the honorable member from South Carolina, these Abolition societies commenced their course of action in 1835. It is said, I do not know how true it may be, that they sent incendiary publications into the slave States; at any rate, they attempted to arouse, and did arouse, a very strong feeling; in other words, they created great agitation in the North against Southern slavery. Well, what was the result? The bonds of the slaves were bound more firmly than before, their rivets were more strongly fastened. Public opinion, which in Virginia had begun to be exhibited against slavery, and was opening out for the discussion of the question, drew back and shut itself up in its castle. I wish to know whether anybody in Virginia can now talk openly as Mr. Randolph, Governor McDowell, and others talked in 1832, and sent their remarks to the press? We all know the fact, and we all

know the cause; and everything that these agitating people have done has been, not to enlarge, but to restrain, not to set free, but to bind faster, the slave population of the South.

Again, sir, the violence of the Northern press is complained of. The press violent! Why, sir, the press is violent everywhere. There are outrageous reproaches in the North against the South, and there are reproaches as vehement in the South against the North. Sir, the extremists of both parts of this country are violent; they mistake loud and violent talk for eloquence and for reason. They think that he who talks loudest reasons best. And this we must expect, when the press is free, as it is here, and I trust always will be; for, with all its licentiousness and all its evil, the entire and absolute freedom of the press is essential to the preservation of government on the basis of a free constitution. Wherever it exists there will be foolish and violent paragraphs in the newspapers, as there are, I am sorry to say, foolish and violent speeches in both Houses of Congress. In truth, sir, I must say that, in my opinion, the vernacular tongue of the country has become greatly vitiated, depraved, and corrupted by the style of our Congressional debates. And if it were possible for those debates to vitiate the principles of the people as much as they have depraved their tastes, I should cry out, "God save the Republic!"

Well, in all this I see no solid grievance, no grievance presented by the South, within the redress of the government, but the single one to which I have referred; and that is, the want of a proper regard to the injunction of the Constitution for the delivery of fugitive slaves.

There are also complaints of the North against the South.

I need not go over them particularly. The first and gravest is, that the North adopted the Constitution, recognizing the existence of slavery in the States, and recognizing the right, to a certain extent, of the representation of slaves in Congress, under a state of sentiment and expectation which does not now exist; and that, by events, by circumstances, by the eagerness of the South to acquire territory and extend her slave population, the North finds itself, in regard to the relative influence of the South and the North, of the free States and the slave States, where it never did expect to find itself when they agreed to the compact of the Constitution. They complain, therefore, that, instead of slavery being regarded as an evil, as it was then, an evil which all hoped would be extinguished gradually, it is now regarded by the South as an institution to be cherished, and preserved, and extended; an institution which the South has already extended to the utmost of her power by the acquisition of new territory.

Well, then, passing from that, everybody in the North reads; and everybody reads whatsoever the newspapers contain; and the newspapers, some of them, especially those presses to which I have alluded, are careful to spread about among the people every reproachful sentiment uttered by any Southern man bearing at all against the North; everything that is calculated to exasperate and to alienate; and there are many such things, as everybody will admit, from the South, or some portion of it, which are disseminated among the reading people; and they do exasperate, and alienate, and produce a most mischievous effect upon the public mind at the North. Sir, I would not notice things of this sort appearing in obscure quarters; but one thing has occurred in this debate which struck me very forcibly.

An honorable member from Louisiana addressed us the other day on this subject. I suppose there is not a more amiable and worthy gentleman in this chamber, nor a gentleman who would be more slow to give offence to anybody, and he did not mean in his remarks to give offence. But what did he say? Why, sir, he took pains to run a contrast between the slaves of the South and the laboring people of the North, giving the preference, in all points of condition, and comfort, and happiness, to the slaves of the South. The honorable member, doubtless, did not suppose that he gave any offence, or did any injustice. He was merely expressing his opinion. But does he know how remarks of that sort will be received by the laboring people of the North? Why, who are the laboring people of the North? They are the whole North. They are the people who till their own farms with their own hands; freeholders, educated men, independent men. Let me say, sir, that five-sixths of the whole property of the North is in the hands of the laborers of the North; they cultivate their farms, they educate their children, they provide the means of independence. If they are not freeholders, they earn wages; these wages accumulate, are turned into capital, into new freeholds, and small capitalists are created. Such is the case, and such the course of things, among the industrious and frugal. And what can these people think when so respectable and worthy a gentleman as the member from Louisiana undertakes to prove that the absolute ignorance and the abject slavery of the South are more in conformity with the high purposes and destiny of immortal, rational human beings, than the educated, the independent free labor of the North?

There is a more tangible and irritating cause of grievance

at the North. Free blacks are constantly employed in the vessels of the North, generally as cooks or stewards. When the vessel arrives at a Southern port, these free colored men are taken on shore, by the police or municipal authority, imprisoned, and kept in prison till the vessel is again ready to sail. This is not only irritating, but exceedingly unjustifiable and oppressive. Mr. Hoar's mission, some time ago, to South Carolina, was a well-intended effort to remove this cause of complaint. The North thinks such imprisonments illegal and unconstitutional; and as the cases occur constantly and frequently, they regard it as a great grievance.

Now, sir, so far as any of these grievances have their foundation in matters of law, they can be redressed, and ought to be redressed; and so far as they have their foundation in matters of opinion, in sentiment, in mutual criminination and recrimination, all that we can do is to endeavor to allay the agitation, and cultivate a better feeling and more fraternal sentiments between the South and the North.

Mr. President, I should much prefer to have heard from every member on this floor declarations of opinion that this Union could never be dissolved, than the declaration of opinion by anybody, that, in any case, under the pressure of any circumstances, such a dissolution was possible. I hear with distress and anguish the word "secession," especially when it falls from the lips of those who are patriotic, and known to the country, and known all over the world, for their political services. Secession! Peaceable secession! Sir, your eyes and mine are never destined to see that miracle. The dismemberment of this vast country without convulsion! The breaking up of the fountains of the great deep without ruffling the surface!

Who is so foolish, I beg everybody's pardon, as to expect to see any such thing? Sir, he who sees these States, now revolving in harmony around a common centre, and expects to see them quit their places and fly off without convulsion, may look the next hour to see the heavenly bodies rush from their spheres, and jostle against each other in the realms of space, without causing the wreck of the universe. There can be no such thing as a peaceable secession. Peaceable secession is an utter impossibility. Is the great Constitution under which we live, covering this whole country—is it to be thawed and melted away by secession, as the snows on the mountain melt under the influence of a vernal sun, disappear almost unobserved, and run off? No, sir! No, sir! I will not state what might produce the disruption of the Union; but, sir, I see as plainly as I see the sun in heaven what that disruption itself must produce; I see that it must produce war, and such a war as I will not describe, in its twofold character.

Peaceable secession! Peaceable secession! The concurrent agreement of all the members of this great Republic to separate! A voluntary separation, with alimony on one side and on the other. Why, what would be the result? Where is the line to be drawn? What States are to secede? What is to remain American? What am I to be? An American no longer? Am I to become a sectional man, a local man, a separatist, with no country in common with the gentlemen who sit around me here, or who fill the other House of Congress? Heaven forbid! Where is the flag of the Republic to remain? Where is the eagle still to tower? or is he to cower, and shrink, and fall to the ground? Why, sir, our ancestors, our fathers and our grandfathers, those of them that are yet living among us

with prolonged lives, would rebuke and reproach us; and our children and our grandchildren would cry out shame upon us, if we of this generation should dishonor these ensigns of the power of the government and the harmony of that Union which is every day felt among us with so much joy and gratitude. What is to become of the army? What is to become of the navy? What is to become of the public lands? How is each of the thirty States to defend itself? I know, although the idea has not been stated distinctly, there is to be, or it is supposed possible that there will be, a Southern Confederacy. I do not mean, when I allude to this statement, that any one seriously contemplates such a state of things. I do not mean to say that it is true, but I have heard it suggested elsewhere, that the idea has been entertained, that, after the dissolution of this Union, a Southern Confederacy might be formed. I am sorry, sir, that it has ever been thought of, talked of, or dreamed of, in the wildest flights of human imagination. But the idea, so far as it exists, must be of a separation, assigning the slave States to one side and the free States to the other. Sir, I may express myself too strongly, perhaps, but there are impossibilities in the natural as well as in the physical world, and I hold the idea of a separation of these States, those that are free to form one government, and those that are slaveholding to form another, as such an impossibility. We could not separate the States by any such line, if we were to draw it. We could not sit down here to-day and draw a line of separation that would satisfy any five men in the country. There are natural causes that would keep and tie us together, and there are social and domestic relations which we could not break if we would, and which we should not if we could.

Sir, nobody can look over the face of this country at the present moment, nobody can see where its population is the most dense and growing, without being ready to admit, and compelled to admit, that erelong the strength of America will be in the Valley of the Mississippi. Well, now, sir, I beg to inquire what the wildest enthusiast has to say on the possibility of cutting that river in two, and leaving free States at its source and on its branches, and slave States down near its mouth, each forming a separate government? Pray, sir, let me say to the people of this country, that these things are worthy of their pondering and of their consideration. Here, sir, are five millions of freemen in the free States north of the river Ohio. Can anybody suppose that this population can be severed, by a line that divides them from the territory of a foreign and an alien government, down somewhere, the Lord knows where, upon the lower banks of the Mississippi? What would become of Missouri? Will she join the arrondissement of the slave States? Shall the man from the Yellowstone and the Platte be connected, in the new republic, with the man who lives on the southern extremity of the Cape of Florida? Sir, I am ashamed to pursue this line of remark. I dislike it, I have an utter disgust for it. I would rather hear of natural blasts and mildews, war, pestilence, and famine, than to hear gentlemen talk of secession. To break up this great government! to dismember this glorious country! to astonish Europe with an act of folly such as Europe for two centuries has never beheld in any government or any people! No, sir! no, sir! There will be no secession! Gentlemen are not serious when they talk of secession.

Sir, I hear there is to be a convention held at Nashville.

I am bound to believe that, if worthy gentlemen meet at Nashville in convention, their object will be to adopt conciliatory counsels; to advise the South to forbearance and moderation, and to advise the North to forbearance and moderation; and to inculcate principles of brotherly love and affection, and attachment to the Constitution of the country as it now is. I believe, if the convention meet at all, it will be for this purpose; for certainly, if they meet for any purpose hostile to the Union, they have been singularly inappropriate in their selection of a place. I remember, sir, that, when the treaty of Amiens was concluded between France and England, a sturdy Englishman and a distinguished orator, who regarded the conditions of the peace as ignominious to England, said in the House of Commons, that, if King William could know the terms of that treaty, he would turn in his coffin! Let me commend this saying of Mr. Windham, in all its emphasis and in all its force, to any persons who shall meet at Nashville for the purpose of concerting measures for the overthrow of this Union over the bones of Andrew Jackson!

Sir, I wish now to make two remarks, and hasten to a conclusion. I wish to say, in regard to Texas, that if it should be hereafter, at any time, the pleasure of the government of Texas to cede to the United States a portion, larger or smaller, of her territory which lies adjacent to New Mexico, and north of 36° 30′ of north latitude, to be formed into free States, for a fair equivalent in money or in the payment of her debt, I think it an object well worthy the consideration of Congress, and I shall be happy to concur in it myself, if I should have a connection with the government at that time.

I have one other remark to make. In my observations

upon slavery as it has existed in this country, and as it now exists, I have expressed no opinion of the mode of its extinguishment or melioration. I will say, however, though I have nothing to propose, because I do not deem myself so competent as other gentlemen to take any lead on this subject, that if any gentleman from the South shall propose a scheme, to be carried on by this government upon a large scale, for the transportation of free colored people to any colony or any place in the world, I should be quite disposed to incur almost any degree of expense to accomplish that object. Nay, sir, following an example set more than twenty years ago by a great man, then a Senator from New York, I would return to Virginia, and through her to the whole South, the money received from the lands and territories ceded by her to this government, for any such purpose as to remove, in whole or in part, or in any way to diminish or deal beneficially with, the free colored population of the Southern States. I have said that I honor Virginia for her cession of this territory. There have been received into the treasury of the United States eighty millions of dollars, the proceeds of the sales of the public lands ceded by her. If the residue should be sold at the same rate, the whole aggregate will exceed two hundred millions of dollars. If Virginia and the South see fit to adopt any proposition to relieve themselves from the free people of color among them, or such as may be made free, they have my full consent that the government shall pay them any sum of money out of the proceeds of that cession which may be adequate to the purpose.

And now, Mr. President, I draw these observations to a close. I have spoken freely, and I meant to do so. I have sought to make no display. I have sought to enliven the

occasion by no animated discussion, nor have I attempted any train of elaborate argument. I have wished only to speak my sentiments, fully and at length, being desirous, once and for all, to let the Senate know, and to let the country know, the opinions and sentiments which I entertain on all these subjects. These opinions are not likely to be suddenly changed. If there be any future service that I can render to the country, consistently with these sentiments and opinions, I shall cheerfully render it. If there be not, I shall still be glad to have had an opportunity to disburden myself from the bottom of my heart, and to make known every political sentiment that therein exists.

And now, Mr. President, instead of speaking of the possibility or utility of secession, instead of dwelling in those caverns of darkness, instead of groping with those ideas so full of all that is horrid and horrible, let us come out into the light of day; let us enjoy the fresh air of Liberty and Union; let us cherish those hopes which belong to us; let us devote ourselves to those great objects that are fit for our consideration and our action; let us raise our conceptions to the magnitude and the importance of the duties that devolve upon us; let our comprehension be as broad as the country for which we act, our aspirations as high as its certain destiny; let us not be pygmies in a case that calls for men. Never did there devolve on any generation of men higher trusts than now devolve upon us, for the preservation of this Constitution and the harmony and peace of all who are destined to live under it. Let us make our generation one of the strongest and brightest links in that golden chain which is destined, I fondly believe, to grapple the people of all the States to this Constitution for ages to come. We have a great, popular, con-

stitutional government, guarded by law and by judicature, and defended by the affections of the whole people. No monarchical throne presses these States together, no iron chain of military power encircles them; they live and stand under a government popular in its form, representative in its character, founded upon principles of equality, and so constructed, we hope, as to last forever. In all its history it has been beneficent; it has trodden down no man's liberty; it has crushed no State. Its daily respiration is liberty and patriotism; its yet youthful veins are full of enterprise, courage, and honorable love of glory and renown. Large before, the country has now, by recent events, become vastly larger. This Republic now extends, with a vast breadth, across the whole continent. The two great seas of the world wash the one and the other shore. We realize, on a mighty scale, the beautiful description of the ornamental border of the buckler of Achilles:

> "Now, the broad shield complete, the artist crowned
> With his last hand, and poured the ocean round;
> In living silver seemed the waves to roll,
> And beat the buckler's verge, and bound the whole."

THE ADDITION TO THE CAPITOL

AN ADDRESS DELIVERED AT THE LAYING OF THE CORNERSTONE OF THE ADDITION TO THE CAPITOL, JULY 4, 1851

Fellow Citizens:

I GREET you well; I give you joy, on the return of this anniversary; and I felicitate you, also, on the more particular purpose of which this ever-memorable day has been chosen to witness the fulfilment. Hail! all hail! I see before and around me a mass of faces glowing with cheerful-

ness and patriotic pride. I see thousands of eyes turned toward other eyes, all sparkling with gratification and delight. This is the New World! This is America! This is Washington! and this the Capitol of the United States! And where else, among the nations, can the seat of government be surrounded, on any day of any year, by those who have more reason to rejoice in the blessings which they possess? Nowhere, fellow citizens! assuredly, nowhere! Let us, then, meet this rising sun with joy and thanksgiving!

This is that day of the year which announced to mankind the great fact of American independence. This fresh and brilliant morning blesses our vision with another beholding of the birthday of our nation; and we see that nation, of recent origin, now among the most considerable and powerful, and spreading over the continent from sea to sea.

Among the first colonists from Europe to this part of America, there were some, doubtless, who contemplated the distant consequences of their undertaking, and who saw a great futurity. But, in general, their hopes were limited to the enjoyment of a safe asylum from tyranny, religious and civil, and to respectable subsistence, by industry and toil. A thick veil hid our times from their view. But the progress of America, however slow, could not but at length awaken genius, and attract the attention of mankind.

In the early part of the second century of our history, Bishop Berkeley, who, it will be remembered, had resided for some time in Newport, in Rhode Island, wrote his well-known "Verses on the Prospect of Planting Arts and Learning in America." The last stanza of this little poem seems to have been produced by a high poetical inspiration:

"Westward the course of empire takes its way;
The four first acts already past,
A fifth shall close the drama with the day:
Time's noblest offspring is the last."

This extraordinary prophecy may be considered only as the result of long foresight and uncommon sagacity; of a foresight and sagacity stimulated, nevertheless, by excited feeling and high enthusiasm. So clear a vision of what America would become was not founded on square miles, or on existing numbers, or on any common laws of statistics. It was an intuitive glance into futurity; it was a grand conception, strong, ardent, glowing, embracing all time since the creation of the world, and all regions of which that world is composed, and judging of the future by just analogy with the past. And the inimitable imagery and beauty with which the thought is expressed, joined to the conception itself, render it one of the most striking passages in our language.

On the day of the Declaration of Independence our illustrious fathers performed the first scene in the last great act of this drama; one in real importance infinitely exceeding that for which the great English poet invokes

"A muse of fire, . . .
A kingdom for a stage, princes to act,
And monarchs to behold the swelling scene!"

The Muse inspiring our fathers was the Genius of Liberty, all on fire with a sense of oppression, and a resolution to throw it off; the whole world was the stage, and higher characters than princes trod it; and, instead of monarchs, countries and nations and the age beheld the swelling scene. How well the characters were cast, and how well each acted

his part, and what emotions the whole performance excited, let history, now and hereafter, tell.

At a subsequent period, but before the Declaration of Independence, the Bishop of St. Asaph published a discourse, in which the following remarkable passages are found:

"It is difficult for man to look into the destiny of future ages; the designs of Providence are vast and complicated, and our own powers are too narrow to admit of much satisfaction to our curiosity. But when we see many great and powerful causes constantly at work, we cannot doubt of their producing proportionable effects.

"The Colonies in North America have not only taken root and acquired strength, but seem hastening with an accelerated progress to such a powerful state as may introduce a new and important change in human affairs.

"Descended from ancestors of the most improved and enlightened part of the Old World, they receive, as it were by inheritance, all the improvements and discoveries of their mother country. And it happens fortunately for them to commence their flourishing state at a time when the human understanding has attained to the free use of its powers, and has learned to act with vigor and certainty. They may avail themselves, not only of the experience and industry, but even of the errors and mistakes, of former days. Let it be considered for how many ages a great part of the world appears not to have thought at all; how many more they have been busied in forming systems and conjectures, while reason has been lost in a labyrinth of words, and they never seem to have suspected on what frivolous matters their minds were employed.

"And let it be well understood what rapid improvements, what important discoveries, have been made in a few years, by a few countries, with our own at their head, which have at last discovered the right method of using their faculties.

"May we not reasonably expect that a number of prov-

inces possessed of these advantages and quickened by mutual emulation, with only the common progress of the human mind, should very considerably enlarge the boundaries of science?

"The vast continent itself, over which they are gradually spreading, may be considered as a treasure yet untouched of natural productions that shall hereafter afford ample matter for commerce and contemplation. And if we reflect what a stock of knowledge may be accumulated by the constant progress of industry and observation, fed with fresh supplies from the stores of nature, assisted sometimes by those happy strokes of chance which mock all the powers of invention, and sometimes by those superior characters which arise occasionally to instruct and enlighten the world, it is difficult even to imagine to what height of improvement their discoveries may extend.

"And perhaps they may make as considerable advances in the arts of civil government and the conduct of life. We have reason to be proud, and even jealous, of our excellent Constitution; but those equitable principles on which it was formed, an equal representation (the best discovery of political wisdom), and a just and commodious distribution of power, which with us were the price of civil wars, and the rewards of the virtues and sufferings of our ancestors, descend to them as a natural inheritance, without toil or pain.

"But must they rest here, as in the utmost effort of human genius? Can chance and time, the wisdom and the experience of public men, suggest no new remedy against the evils which vices and ambition are perpetually apt to cause? May they not hope, without presumption, to preserve a greater zeal for piety and public devotion than we have done? For sure it can hardly happen to them, as it has to us, that, when religion is best understood and rendered most pure and reasonable, then should be the precise time when many cease to believe and practice it, and all in general become most indifferent to it.

"May they not possibly be more successful than their

mother country has been in preserving that reverence and authority which are due to the laws? to those who make, and to those who execute them? May not a method be invented of procuring some tolerable share of the comforts of life to those inferior useful ranks of men to whose industry we are indebted for the whole? Time and discipline may discover some means to correct the extreme inequalities of condition between the rich and the poor, so dangerous to the innocence and happiness of both. They may fortunately be led by habit and choice to despise that luxury which is considered with us the true enjoyment of wealth. They may have little relish for that ceaseless hurry of amusements which is pursued in this country without pleasure, exercise, or employment. And, perhaps, after trying some of our follies and caprices, and rejecting the rest, they may be led by reason and experiment to that old simplicity which was first pointed out by nature, and has produced those models which we still admire in arts, eloquence and manners. The diversity of new scenes and situations, which so many growing States must necessarily pass through, may introduce changes in the fluctuating opinions and manners of men which we can form no conception of; and not only the gracious disposition of Providence, but the visible preparation of causes, seems to indicate strong tendencies toward a general improvement."

Fellow citizens, this "gracious disposition of Providence," and this "visible preparation of causes," at length brought on the hour for decisive action. On the 4th of July, 1776, the Representatives of the United States of America, in Congress assembled, declared that these United Colonies are, and of right ought to be, free and independent States.

This Declaration, made by most patriotic and resolute men, trusting in the justice of their cause and the protection of Heaven, and yet made not without deep solicitude and anxiety, has now stood for seventy-five years, and still

stands. It was sealed in blood. It has met dangers, and overcome them; it has had enemies, and conquered them; it has had detractors, and abashed them all; it has had doubting friends, but it has cleared all doubts away and now, to-day, raising its august form higher than the clouds, twenty millions of people contemplate it with hallowed love and the world beholds it, and the consequences which have followed from it, with profound admiration.

This anniversary animates and gladdens and unites all American hearts. On other days of the year we may be party men, indulging in controversies, more or less important to the public good; we may have likes and dislikes, and we may maintain our political differences, often with warm, and sometimes with angry feelings. But to-day we are Americans all; and all nothing but Americans. As the great luminary over our heads, dissipating mists and fogs, now cheers the whole hemisphere, so do the associations connected with this day disperse all cloudy and sullen weather in the minds and hearts of true Americans. Every man's heart swells within him; every man's port and bearing become somewhat more proud and lofty, as he remembers that seventy-five years have rolled away, and that the great inheritance of liberty is still his; his, undiminished and unimpaired; his in all its original glory; his to enjoy, his to protect, and his to transmit to future generations.

Fellow citizens, this inheritance which we enjoy to-day is not only an inheritance of liberty, but of our own peculiar American liberty. Liberty has existed in other times, in other countries, and in other forms. There has been a Grecian liberty, bold and powerful, full of spirit, eloquence, and fire; a liberty which produced multitudes of great men, and has transmitted one immortal name, the name of Demos-

thenes, to posterity. But still it was a liberty of disconnected States, sometimes united, indeed, by temporary leagues and confederacies, but often involved in wars between themselves. The sword of Sparta turned its sharpest edge against Athens, enslaved her, and devastated Greece; and, in her turn, Sparta was compelled to bend before the power of Thebes. And let it ever be remembered, especially let the truth sink deep into all American minds, that it was the want of union among her several States which finally gave the mastery of all Greece to Philip of Macedon.

And there has also been a Roman liberty, a proud, ambitious, domineering spirit, professing free and popular principles in Rome itself, but, even in the best days of the Republic, ready to carry slavery and chains into her provinces, and through every country over which her eagles could be borne. What was the liberty of Spain, or Gaul, or Germany, or Britain, in the days of Rome? Did true constitutional liberty then exist? As the Roman empire declined, her provinces, not instructed in the principles of free popular government, one after another declined also, and when Rome herself fell, in the end, all fell together.

I have said, gentlemen, that our inheritance is an inheritance of American liberty. That liberty is characteristic, peculiar, and altogether our own. Nothing like it existed in former times, nor was known in the most enlightened states of antiquity; while with us its principles have become interwoven into the minds of individual men, connected with our daily opinions, and our daily habits, until it is, if I may so say, an element of social as well as of political life; and the consequence is, that to whatever region an American citizen carries himself, he takes with him, fully developed in his own understanding and experience, our

American principles and opinions, and become ready at once, in co-operation with others, to apply them to the formation of new governments. Of this a most wonderful instance may be seen in the history of the State of California.

On a former occasion I ventured to remark, that "it is very difficult to establish a free conservative government for the equal advancement of all the interests of society. What has Germany done, learned Germany, more full of ancient lore than all the world besides? What has Italy done? What have they done who dwell on the spot where Cicero lived? They have not the power of self-government which a common town meeting, with us, possesses. . . . Yes, I say that those persons who have gone from our town meetings to dig gold in California are more fit to make a republican government than any body of men in Germany or Italy; because they have learned this one great lesson, that there is no security without law, and that, under the circumstances in which they are placed, where there is no military authority to cut their throats, there is no sovereign will but the will of the majority; that, therefore, if they remain, they must submit to that will." And this I believe to be strictly true.

Now, fellow citizens, if your patience will hold out, I will venture, before proceeding to the more appropriate and particular duties of the day, to state, in a few words, what I take these American political principles in substance to be. They consist, as I think, in the first place, in the establishment of popular governments, on the basis of representation; for it is plain that a pure democracy, like that which existed in some of the States of Greece, in which every individual had a direct vote in the enactment of all laws, can not possibly exist in a country of wide extent. This representation is to be made as equal as circumstances will allow.

Now, this principle of popular representation, prevailing either in all the branches of government, or in some of them, has existed in these States almost from the days of the settlements at Jamestown and Plymouth; borrowed, no doubt, from the example of the popular branch of the British Legislature. The representation of the people in the British House of Commons was, however, originally very unequal, and is yet not equal. Indeed, it may be doubted whether the appearance of knights and burgesses, assembling on the summons of the crown, was not intended at first as an assistance and support to the royal prerogative, in matters of revenue and taxation, rather than as a mode of ascertaining popular opinion. Nevertheless, representation had a popular origin, and savored more and more of the character of that origin, as it acquired, by slow degrees, greater and greater strength, in the actual government of the country. The Constitution of the House of Commons was certainly a form of representation, however unequal; numbers were counted, and majorities prevailed; and when our ancestors, acting upon this example, introduced more equality of representation, the idea assumed a more rational and distinct shape. At any rate, this manner of exercising popular power was familiar to our fathers when they settled on this continent. They adopted it, and generation has risen up after generation, all acknowledging it, and all learning its practice and its forms.

The next fundamental principle in our system is, that the will of the majority, fairly expressed through the means of representation, shall have the force of law; and it is quite evident that, in a country without thrones or aristocracies or privileged castes or classes, there can be no other foundation for law to stand upon.

And, as the necessary result of this, the third element is, that the law is the supreme rule for the government of all. The great sentiment of Alcæus, so beautifully presented to us by Sir William Jones, is absolutely indispensable to the construction and maintenance of our political systems:

"What constitutes a State?
Not high-raised battlement or labored mound,
Thick wall or moated gate;
Not cities proud, with spires and turrets crowned;
Not bays and broad-armed ports,
Where, laughing at the storm, rich navies ride;
Not starred and spangled courts,
Where low-browed baseness wafts perfume to pride.
No: MEN, high-minded MEN,
With powers as far above dull brutes endued,
In forest, brake, or den,
As beasts excel cold rocks and brambles rude:
Men who their duties know,
But know their rights, and, knowing, dare maintain;
Prevent the long-aimed blow,
And crush the tyrant while they rend the chain:
These constitute a State;
And SOVEREIGN LAW, that State's collected will,
O'er thrones and globes elate
Sits empress, crowning good, repressing ill."

And, finally, another most important part of the great fabric of American liberty is, that there shall be written constitutions, founded on the immediate authority of the people themselves, and regulating and restraining all the powers conferred upon government, whether legislative, executive, or judicial.

This, fellow citizens, I suppose to be a just summary of our American principles, and I have on this occasion sought to express them in the plainest and in the fewest words. The summary may not be entirely exact, but I hope it may be sufficiently so to make manifest to the rising generation among ourselves, and to those elsewhere who may

choose to inquire into the nature of our political institutions, the general theory upon which they are founded.

And I now proceed to add that the strong and deep-settled conviction of all intelligent persons among us is, that, in order to support a useful and wise government upon these popular principles, the general education of the people, and the wide diffusion of pure morality and true religion, are indispensable. Individual virtue is a part of public virtue. It is difficult to conceive how there can remain morality in the government when it shall cease to exist among the people; or how the aggregate of the political institutions, all the organs of which consist only of men, should be wise, and beneficent, and competent to inspire confidence, if the opposite qualities belong to the individuals who constitute those organs, and make up that aggregate.

And now, fellow citizens, I take leave of this part of the duty which I proposed to perform; and, once more felicitating you and myself that our eyes have seen the light of this blessed morning, and that our ears have heard the shouts with which joyous thousands welcome its return, and joining with you in the hope that every revolving year may renew these rejoicings to the end of time, I proceed to address you, shortly, upon the particular occasion of our assembling here to-day.

Fellow citizens, by the act of Congress of the 30th of September, 1850, provision was made for the extension of the Capitol, according to such plan as might be approved by the President of the United States, and for the necessary sums to be expended, under his direction, by such architect as he might appoint. This measure was imperatively de-

manded, for the use of the legislative and judiciary departments, the public libraries, the occasional accommodation of the chief executive magistrate, and for other objects. No act of Congress incurring a large expenditure has received more general approbation from the people. The President has proceeded to execute this law. He has approved a plan; he has appointed an architect; and all things are now ready for the commencement of the work.

The anniversary of national independence appeared to afford an auspicious occasion for laying the foundation stone of the additional building. That ceremony has now been performed by the President himself, in the presence and view of this multitude. He has thought that the day and the occasion made a united and imperative call for some short address to the people here assembled; and it is at his request that I have appeared before you to perform that part of the duty which was deemed incumbent on us.

Beneath the stone is deposited, among other things, a list of which will be published, the following brief account of the proceedings of this day, in my handwriting:

"On the morning of the first day of the seventy-sixth year of the Independence of the United States of America, in the city of Washington, being the 4th day of July, 1851, this stone, designed as the cornerstone of the extension of the Capitol, according to a plan approved by the President, in pursuance of an act of Congress, was laid by

MILLARD FILLMORE,

PRESIDENT OF THE UNITED STATES,

assisted by the Grand Master of the Masonic Lodges, in the presence of many members of Congress, of officers of the Executive and Judiciary Departments, National, State, and District, of officers of the army and navy, the corporate

authorities of this and neighboring cities, many associations, civil and military and Masonic, members of the Smithsonian Institution and National Institute, professors of colleges and teachers of schools of the District, with their students and pupils, and a vast concourse of people from places near and remote, including a few surviving gentlemen who witnessed the laying of the cornerstone of the Capitol by President Washington, on the 18th day of September, A.D. 1793.

"If, therefore, it shall be hereafter the will of God that this structure shall fall from its base, that its foundation be upturned, and this deposit brought to the eyes of men, be it then known, that on this day the Union of the United States of America stands firm, that their Constitution still exists unimpaired, and with all its original usefulness and glory; growing every day stronger and stronger in the affections of the great body of the American people, and attracting more and more the admiration of the world. And all here assembled, whether belonging to public life or to private life, with hearts devoutly thankful to Almighty God for the preservation of the liberty and happiness of the country, unite in sincere and fervent prayers that this deposit, and the walls and arches, the domes and towers, the columns and entablatures, now to be erected over it, may endure forever!

"God save the United States of America!

"Daniel Webster,

"*Secretary of State of the United States.*"

Fellow citizens, fifty-eight years ago Washington stood on this spot to execute a duty like that which has now been performed. He then laid the cornerstone of the original Capitol. He was at the head of the government, at that time weak in resources, burdened with debt, just struggling into political existence and respectability, and agitated by the heaving waves which were overturning European

thrones. But even then, in many important respects, the government was strong. It was strong in Washington's own great character; it was strong in the wisdom and patriotism of other eminent public men, his political associates and fellow laborers; and it was strong in the affections of the people.

Since that time astonishing changes have been wrought in the condition and prospects of the American people; and a degree of progress witnessed with which the world can furnish no parallel. As we review the course of that progress, wonder and amazement arrest our attention at every step. The present occasion, although allowing of no lengthened remarks, may yet, perhaps, admit of a short comparative statement of important subjects of national interest as they existed at that day, and as they now exist. I have adopted for this purpose the tabular form of statement (page 218), as being the most brief and significant.

In respect to the growth of Western trade and commerce, I extract a few sentences from a very valuable address before the Historical Society of Ohio, by William D. Gallagher, Esq., 1850:

"A few facts will exhibit as well as a volume the wonderful growth of Western trade and commerce. Previous to the year 1800, some eight or ten keel-boats, of twenty or twenty-five tons each, performed all the carrying trade between Cincinnati and Pittsburg. In 1802 the first government vessel appeared on Lake Erie. In 1811 the first steamboat (the 'Orleans') was launched at Pittsburg. In 1826 the waters of Michigan were first plowed by the keel of a steamboat, a pleasure trip to Green Bay being planned and executed in the summer of this year. In 1832 a steamboat first appeared at Chicago. At the present time the entire number of steamboats running on the Mississippi and

COMPARATIVE TABLE

	Year 1793	Year 1851
Number of States	15	31
Representatives and Senators in Congress	135	295
Population of the United States	3,929,328	23,267,498
Population of Boston	18,038	136,871
Population of Baltimore	13,503	169,054
Population of Philadelphia	42,520	409,045
Population of New York (city)	33,121	515,507
Population of Washington	. . .	40,075
Population of Richmond	4,000	27,582
Population of Charleston	16,359	42,983
Amount of receipts into the Treasury	$5,720,624	$52,312,980
Amount of expenditures	$7,529,575	$48,005,879
Amount of imports	$31,000,000	$215,725,995
Amount of exports	$26,109,000	$217,517,130
Amount of tonnage (tons)	520,764	3,772,440
Area of the United States in square miles	805,461	3,314,365
Rank and file of the army	5,120	10,000
Militia (enrolled)	. . .	2,006,456
Navy of the United States (vessels)	(None)	76
Navy armament (ordnance)	. . .	2,012
Treaties and conventions with foreign powers	9	90
Lighthouses and light-boats	12	372
Expenditures for ditto	$12,061	$529,265
Area of the Capitol	½ acre	4½ acres
Number of miles of railroad in operation	. . .	10,287
Cost of ditto	. . .	$306,607,954
Number of miles in course of construction	. . .	10,092
Lines of electric telegraph, in miles	. . .	15,000
Number of post-offices	209	21,551
Number of miles of post-route	5,642	196,290
Amount of revenue from post-offices	$104,747	$6,727,867
Amount of expenditures of Post-Office Department	$72,040	$6,024,567
Number of miles of mail transportation	. . .	52,465,724
Number of colleges	19	121
Public libraries	35	694
Volumes in ditto	75,000	2,201,632
School libraries	. . .	10,000
Volumes in ditto	. . .	2,000,000
Emigrants from Europe to the United States	10,000	299,610
Coinage at the Mint	$9,664	$52,019,465

Ohio and their tributaries is more probably over than under six hundred, the aggregate tonnage of which is not short of one hundred and forty thousand; a larger number of steamboats than England can claim, and a greater steam commercial marine than that employed by Great Britain and her dependencies."

And now, fellow citizens, having stated to you this infallible proof of the growth and prosperity of the nation, I ask you, and I would ask every man, whether the government which has been over us has proved itself an infliction or a curse to the country, or any part of it?

Ye men of the South, of all the original Southern States, what say you to all this? Are you, or any of you, ashamed of this great work of your fathers? Your fathers were not they who stoned the prophets and killed them. They were among the prophets; they were of the prophets; they were themselves the prophets.

Ye men of Virginia, what do you say to all this? Ye men of the Potomac, dwelling along the shores of that river on which Washington lived and died, and where his remains now rest, ye, so many of whom may see the domes of the Capitol from your own homes, what say ye?

Ye men of James River and the Bay, places consecrated by the early settlement of your Commonwealth, what do you say? Do you desire, from the soil of your State, or as you travel to the North, to see these halls vacated, their beauty and ornaments destroyed, and their national usefulness gone forever?

Ye men beyond the Blue Ridge, many thousands of whom are nearer to this Capitol than to the seat of government of your own State, what do you think of breaking this great association into fragments of States and of peo-

ple? I know that some of you, and I believe that you all, would be almost as much shocked at the announcement of such a catastrophe, as if you were to be informed that the Blue Ridge itself would soon totter from its base. And ye men of western Virginia, who occupy the great slope from the top of the Alleghanies to Ohio and Kentucky, what benefit do you propose to yourselves by disunion? If you "secede," what do you "secede" from, and what do you "accede" to? Do you look for the current of the Ohio to change, and to bring you and your commerce to the tide-waters of Eastern rivers? What man in his senses can suppose that you would remain part and parcel of Virginia a month after Virginia should have ceased to be part and parcel of the United States?

The secession of Virginia! The secession of Virginia, whether alone or in company, is most improbable, the greatest of all improbabilities. Virginia, to her everlasting honor, acted a great part in framing and establishing the present Constitution. She has had her reward and her distinction. Seven of her noble sons have each filled the Presidency, and enjoyed the highest honors of the country. Dolorous complaints come up to us from the South, that Virginia will not head the march of secession, and lead the other Southern States out of the Union. This, if it should happen, would be something of a marvel, certainly, considering how much pains Virginia took to lead these same States into the Union, and considering, too, that she has partaken as largely of its benefits and its government as any other State.

And ye men of the other Southern States, members of the Old Thirteen; yes, members of the Old Thirteen; that always touches my regard and my sympathies; North Caro-

lina, Georgia, South Carolina! What page in your history, or in the history of any one of you, is brighter than those which have been recorded since the Union was formed? Or through what period has your prosperity been greater, or your peace and happiness better secured? What names even has South Carolina, now so much dissatisfied, what names has she of which her intelligent sons are more proud than those which have been connected with the government of the United States? In Revolutionary times, and in the earliest days of this Constitution, there was no State more honored, or more deserving of honor. Where is she now? And what a fall is there, my countrymen! But I leave her to her own reflections, commending to her, with all my heart, the due consideration of her own example in times now gone by.

Fellow citizens, there are some diseases of the mind as well as of the body, diseases of communities as well as diseases of individuals, that must be left to their own cure; at least it is wise to leave them so until the last critical moment shall arrive.

I hope it is not irreverent, and certainly it is not intended as reproach, when I say, that I know no stronger expression in our language than that which describes the restoration of the wayward son—"he came to himself." He had broken away from all the ties of love, family, and friendship. He had forsaken everything which he had once regarded in his father's house. He had forsworn his natural sympathies, affections, and habits, and taken his journey into a far country. He had gone away from himself and out of himself. But misfortunes overtook him, and famine threatened him with starvation and death. No entreaties from home followed him to beckon him back; no admonition from others

warned him of his fate. But the hour of reflection had come, and nature and conscience wrought within him, until at length "he came to himself."

And now, ye men of the new States of the South! You are not of the original thirteen. The battle had been fought and won, the Revolution achieved, and the Constitution established, before your States had any existence as States. You came to a prepared banquet, and had seats assigned you at table just as honorable as those which were filled by older guests. You have been and are singularly prosperous; and if any one should deny this, you would at once contradict his assertion. You have bought vast quantities of choice and excellent land at the lowest price; and if the public domain has not been lavished upon you, you yourself will admit that it has been appropriated to your own uses by a very liberal hand. And yet in some of these States, not in all, persons are found in favor of a dissolution of the Union, or of secession from it. Such opinions are expressed even where the general prosperity of the community has been the most rapidly advanced. In the flourishing and interesting State of Mississippi, for example, there is a large party which insists that her grievances are intolerable, that the whole body politic is in a state of suffering; and all along, and through her whole extent on the Mississippi, a loud cry rings that her only remedy is "Secession," "Secession." Now, gentlemen, what infliction does the State of Mississippi suffer under? What oppression prostrates her strength or destroys her happiness? Before we can judge of the proper remedy, we must know something of the disease; and, for my part, I confess that the real evil existing in the case appears to me to be a certain inquietude or uneasiness growing out of

a high degree of prosperity and consciousness of wealth and power, which sometimes lead men to be ready for changes, and to push on unreasonably to still higher elevation. If this be the truth of the matter, her political doctors are about right. If the complaint spring from overwrought prosperity, for that disease I have no doubt that secession would prove a sovereign remedy.

But I return to the leading topic on which I was engaged. In the department of invention there have been wonderful applications of science to arts within the last sixty years. The spacious hall of the Patent Office is at once the repository and proof of American inventive art and genius. Their results are seen in the numerous improvements by which human labor is abridged.

Without going into details, it may be sufficient to say, that many of the applications of steam to locomotion and manufactures, of electricity and magnetism to the production of mechanical motion, the electrical telegraph, the registration of astronomical phenomena, the art of multiplying engravings, the introduction and improvement among us of all the important inventions of the Old World, are striking indications of the progress of this country in the useful arts. The network of railroads and telegraphic lines by which this vast country is reticulated have not only developed its resources, but united emphatically, in metallic bands, all parts of the Union. The hydraulic works of New York, Philadelphia, and Boston surpass in extent and importance those of ancient Rome.

But we have not confined our attention to the immediate application of science to the useful arts. We have

entered the field of original research, and have enlarged the bounds of scientific knowledge.

Sixty years ago, besides the brilliant discoveries of Franklin in electricity, scarcely anything had been done among us in the way of original discovery. Our men of science were content with repeating the experiments and diffusing a knowledge of the discoveries of the learned of the Old World, without attempting to add a single new fact or principle to the existing stock. Within the last twenty-five or thirty years a remarkable improvement has taken place in this respect. Our natural history has been explored in all its branches; our geology has been investigated with results of the highest interest to practical and theoretical science. Discoveries have been made in pure chemistry and electricity, which have received the approbation of the world. The advance which has been made in meteorology in this country, within the last twenty years, is equal to that made during the same period in all the world besides.

In 1793 there was not in the United States an instrument with which a good observation of the heavenly bodies could be made. There are now instruments at Washington, Cambridge, and Cincinnati equal to those at the best European observatories, and the original discoveries in astronomy within the last five years, in this country, are among the most brilliant of the age. I can hardly refrain from saying, in this connection, that the "Celestial Mechanics" of La Place has been translated and commented upon by Bowditch.

Our knowledge of the geography and topography of the American Continent has been rapidly extended by the labor and science of the officers of the United States army, and

discoveries of much interest in distant seas have resulted from the enterprise of the navy.

In 1807, a survey of the coast of the United States was commenced, which at that time it was supposed no American was competent to direct. The work has, however, grown within the last few years, under a native superintendent, in importance and extent beyond any enterprise of the kind ever before attempted.

These facts conclusively prove that a great advance has been made among us, not only in the application of science to the wants of ordinary life, but in science itself, in its highest branches, in its adaptation to satisfy the cravings of the immortal mind.

In respect to literature, with the exception of some books of elementary education, and some theological treatises, of which scarcely any but those of Jonathan Edwards have any permanent value, and some works on local history and politics, like Hutchinson's Massachusetts, Jefferson's Notes on Virginia, the "Federalist," Belknap's New Hampshire, and Morse's Geography, and a few others, America had not produced a single work of any repute in literature. We were almost wholly dependent on imported books. Even our Bibles and Testaments were, for the most part, printed abroad. The book trade is now one of the greatest branches of business, and many works of standard value and of high reputation in Europe as well as at home, have been produced by American authors in every department of literary composition.

While the country has been expanding in dimensions, in numbers, and in wealth, the government has applied a wise forecast in the adoption of measures necessary, when the world shall no longer be at peace, to maintain the national

honor, whether by appropriate displays of vigor abroad, or by well-adapted means of defence at home. A navy, which has so often illustrated our history by heroic achievements, though in peaceful times restrained in its operations to narrow limits, possesses, in its admirable elements, the means of great and sudden expansion, and is justly looked upon by the nation as the right arm of its power. An army, still smaller, but not less perfect in its detail, has on many a field exhibited the military aptitudes and prowess of the race, and demonstrated the wisdom which has presided over its organization and government.

While the gradual and slow enlargement of these respective military arms has been regulated by a jealous watchfulness over the public treasure, there has, nevertheless, been freely given all that was needed to perfect their quality; and each affords the nucleus of any enlargement that the public exigencies may demand, from the millions of brave hearts and strong arms upon the land and water.

The navy is the active and aggressive element of national defence; and, let loose from our own seacoast, must display its power in the seas and channels of the enemy. To do this, it need not be large; and it can never be large enough to defend by its presence at home all our ports and harbors. But, in the absence of the navy, what can the regular army or the volunteer militia do against the enemy's line-of-battle ships and steamers, falling without notice upon our coast? What will guard our cities from tribute, our merchant vessels and our navy-yards from conflagration? Here, again, we see a wise forecast in the system of defensive measures which, especially since the close of the war with Great Britain, has been steadily followed by our government.

While the perils from which our great establishments had just escaped were yet fresh in remembrance, a system of fortifications was begun, which now, though not quite complete, fences in our important points with impassable strength. More than four thousand cannon may at any moment, within strong and permanent works, arranged with all the advantages and appliances that the art affords, be turned to the protection of the seacoast, and be served by the men whose hearths they shelter. Happy for us that it is so, since these are means of security that time alone can supply, and since the improvements of maritime warfare, by making distant expeditions easy and speedy, have made them more probable, and at the same time more difficult to anticipate and provide against. The cost of fortifying all the important points of our coast, as well upon the whole Atlantic as the Gulf of Mexico, will not exceed the amount expended on the fortifications of Paris.

In this connection one most important facility in the defence of the country is not to be overlooked; it is the extreme rapidity with which the soldiers of the army, and any number of the militia corps, may be brought to any point where a hostile attack shall at any time be made or threatened.

And this extension of territory embraced within the United States, increase of its population, commerce, and manufactures, development of its resources by canals and railroads, and rapidity of intercommunication by means of steam and electricity, have all been accomplished without overthrow of, or danger to, the public liberties, by any assumption of military power; and, indeed, without any permanent increase of the army, except for the purpose of frontier defence, and of affording a slight guard to the

public property; or of the navy, any further than to assure the navigator that, in whatsoever sea he shall sail his ship, he is protected by the Stars and Stripes of his country. This, too, has been done without the shedding of a drop of blood for treason or rebellion; while systems of popular representation have regularly been supported in the State governments and in the general government; while laws, national and State, of such a character have been passed, and have been so wisely administered, that I may stand up here to-day, and declare, as I now do declare, in the face of all the intelligent of the age, that, for the period which has elapsed from the day that Washington laid the foundation of this Capitol to the present time, there has been no country upon earth in which life, liberty, and property have been more amply and steadily secured, or more freely enjoyed, than in these United States of America. Who is there that will deny this? Who is there prepared with a greater or a better example? Who is there that can stand upon the foundation of facts, acknowledged or proved, and assert that these our republican institutions have not answered the true ends of government beyond all precedent in human history?

There is yet another view. There are still higher considerations. Man is an intellectual being, destined to immortality. There is a spirit in him, and the breath of the Almighty hath given him understanding. Then only is he tending toward his own destiny, while he seeks for knowledge and virtue, for the will of his Maker, and for just conceptions of his own duty. Of all important questions, therefore, let this, the most important of all, be first asked and first answered: In what country of the habitable globe, of great extent and large population, are the means of knowl-

edge the most generally diffused and enjoyed among the people? This question admits of one, and only one, answer. It is here; it is here in these United States; it is among the descendants of those who settled at Jamestown; of those who were pilgrims on the shore of Plymouth; and of those other races of men, who, in subsequent times, have become joined in this great American family. Let one fact, incapable of doubt or dispute, satisfy every mind on this point. The population of the United States is twenty-three millions. Now, take the map of the continent of Europe and spread it out before you. Take your scale and your dividers, and lay off in one area, in any shape you please, a triangle, square, circle, parallelogram, or trapezoid, and of an extent that shall contain one hundred and fifty millions of people, and there will be found within the United States more persons who do habitually read and write than can be embraced within the lines of your demarcation.

But there is something even more than this. Man is not only an intellectual, but he is also a religious being, and his religious feelings and habits require cultivation. Let the religious element in man's nature be neglected, let him be influenced by no higher motives than low self-interest, and subjected to no stronger restraint than the limits of civil authority, and he becomes the creature of selfish passion or blind fanaticism.

The spectacle of a nation powerful and enlightened, but without Christian faith, has been presented, almost within our own day, as a warning beacon for the nations.

On the other hand, the cultivation of the religious sentiment represses licentiousness, incites to general benevolence and the practical acknowledgment of the brotherhood of man, inspires respect for law and order, and gives strength

to the whole social fabric, at the same time that it conducts the human soul upward to the Author of its being.

Now, I think it may be stated with truth, that in no country, in proportion to its population, are there so many benevolent establishments connected with religious instruction, Bible, Missionary, and Tract Societies, supported by public and private contributions, as in our own. There are also institutions for the education of the blind, of idiots, of the deaf and dumb; for the reception of orphan and destitute children, and the insane; for moral reform, designed for children and females respectively; and institutions for the reformation of criminals; not to speak of those numerous establishments, in almost every county and town in the United States, for the reception of the aged, infirm, and destitute poor, many of whom have fled to our shores to escape the poverty and wretchedness of their condition at home.

In the United States there is no church establishment or ecclesiastical authority founded by government. Public worship is maintained either by voluntary associations and contributions, or by trusts and donations of a charitable origin.

Now, I think it safe to say, that a greater portion of the people of the United States attend public worship, decently clad, well behaved, and well seated, than of any other country of the civilized world. Edifices of religion are seen everywhere. Their aggregate cost would amount to an immense sum of money. They are, in general, kept in good repair, and consecrated to the purposes of public worship. In these edifices the people regularly assemble on the Sabbath Day, which, by all classes, is sacredly set apart for rest from secular employment and for religious meditation

and worship, to listen to the reading of the Holy Scriptures, and discourses from pious ministers of the several denominations.

This attention to the wants of the intellect and of the soul, as manifested by the voluntary support of schools and colleges, of churches and benevolent institutions, is one of the most remarkable characteristics of the American people, not less strikingly exhibited in the new than in the older settlements of the country. On the spot where the first trees of the forest were felled, near the log cabins of the pioneers, are to be seen rising together the church and the schoolhouse. So has it been from the beginning, and God grant that it may thus continue!

"On other shores, above their mouldering towns,
In sullen pomp, the tall cathedral frowns;
Simple and frail, our lowly temples throw
Their slender shadows on the paths below;
Scarce steal the winds, that sweep the woodland tracks,
The larch's perfume from the settler's axe,
Ere, like a vision of the morning air,
His slight-framed steeple marks the house of prayer
Yet Faiths pure hymn, beneath its shelter rude
Breathes out as sweetly to the tangled wood,
As where the rays through blazing oriels pour
On marble shaft and tessellated floor."

Who does not admit that this unparalleled growth in prosperity and renown is the result, under Providence, of the union of these States, under a general Constitution, which guarantees to each State a republican form of government, and to every man the enjoyment of life, liberty, and the pursuit of happiness, free from civil tyranny or ecclesiastical domination?

And, to bring home this idea to the present occasion, who does not feel that, when President Washington laid

his hand on the foundation of the first Capitol, he performed a great work of perpetuation of the Union and the Constitution? Who does not feel that this seat of the general government, healthful in its situation, central in its position, near the mountains whence gush springs of wonderful virtue, teeming with Nature's richest products, and yet not far from the bays and the great estuaries of the sea, easily accessible and generally agreeable in climate and association, does give strength to the union of these States? that this city, bearing an immortal name, with its broad streets and avenues, its public squares and magnificent edifices of the general government, erected for the purpose of carrying on within them the important business of the several departments, for the reception of wonderful and curious inventions, for the preservation of the records of American learning and genius, of extensive collections of the products of nature and art, brought hither for study and comparison from all parts of the world—adorned with numerous churches, and sprinkled over, I am happy to say, with many public schools, where all the children of the city, without distinction, have the means of obtaining a good education, and with academies and colleges, professional schools and public libraries—should continue to receive, as it has heretofore received, the fostering care of Congress, and should be regarded as the permanent seat of the national government? Here, too, a citizen of the great republic of letters, a republic which knows not the metes and bounds of political geography, has prophetically indicated his conviction that America is to exercise a wide and powerful influence in the intellectual world, by founding in this city, as a commanding position in the field of science and literature, and placing under the guardianship of the gov-

ernment, an institution "for the increase and diffusion of knowledge among men."

With each succeeding year new interest is added to the spot; it becomes connected with all the historical associations of our country, with her statesmen and her orators, and, alas! its cemetery is annually enriched by the ashes of her chosen sons.

Before us is the broad and beautiful river, separating two of the original thirteen States, which a late President, a man of determined purpose and inflexible will, but patriotic heart, desired to span with arches of ever-enduring granite, symbolical of the firmly cemented union of the North and the South. That President was General Jackson.

On its banks repose the ashes of the Father of his Country, and at our side, by a singular felicity of position, overlooking the city which he designed, and which bears his name, rises to his memory the marble column, sublime in its simple grandeur, and fitly intended to reach a loftier height than any similar structure on the surface of the whole earth.

Let the votive offerings of his grateful countrymen be freely contributed to carry this monument higher and still higher. May I say, as on another occasion, "Let it rise; let it rise till it meet the sun in his coming; let the earliest light of the morning gild it, and parting day linger and play on its summit!"

Fellow citizens, what contemplations are awakened in our minds as we assemble here to re-enact a scene like that performed by Washington! Methinks I see his venerable form now before me, as presented in the glorious statue by Houdon, now in the Capitol of Virginia. He is dignified and grave; but concern and anxiety seem to soften the line-

aments of his countenance. The government over which he presides is yet in the crisis of experiment. Not free from troubles at home, he sees the world in commotion and in arms all around him. He sees that imposing foreign powers are half disposed to try the strength of the recently established American government. We perceive that mighty thoughts, mingled with fears as well as with hopes, are struggling within him. He heads a short procession over these then naked fields; he crosses yonder stream on a fallen tree; he ascends to the top of this eminence, whose original oaks of the forest stand as thick around him as if the spot had been devoted to Druidical worship, and here he performs the appointed duty of the day.

And now, fellow citizens, if this vision were a reality; if Washington actually were now among us, and if he could draw around him the shades of the great public men of his own day, patriots and warriors, orators and statesmen, and were to address us in their presence, would he not say to us: "Ye men of this generation, I rejoice and thank God for being able to see that our labors and toils and sacrifices were not in vain. You are prosperous, you are happy, you are grateful; the fire of liberty burns brightly and steadily in your hearts, while duty and the law restrain it from bursting forth in wild and destructive conflagration. Cherish liberty, as you love it; cherish its securities, as you wish to preserve it. Maintain the Constitution which we labored so painfully to establish, and which has been to you such a source of inestimable blessings. Preserve the Union of the States, cemented as it was by our prayers, our tears, and our blood. Be true to God, to your country, and to your duty. So shall the whole Eastern world follow the morning sun to contemplate you as a nation; so shall all

generations honor you, as they honor us; and so shall that Almighty Power which so graciously protected us, and which now protects you, shower its everlasting blessings upon you and your posterity."

Great Father of your Country! we heed your words; we feel their force as if you now uttered them with lips of flesh and blood. Your example teaches us, your affectionate addresses teach us, your public life teaches us, your sense of the value of the blessings of the Union. Those blessings our fathers have tasted, and we have tasted, and still taste. Nor do we intend that those who come after us shall be denied the same high fruition. Our honor as well as our happiness is concerned. We cannot, we dare not, we will not, betray our sacred trust. We will not filch from posterity the treasure placed in our hands to be transmitted to other generations. The bow that gilds the clouds in the heavens, the pillars that uphold the firmament, may disappear and fall away in the hour appointed by the will of God; but until that day comes, or so long as our lives may last, no ruthless hand shall undermine that bright arch of Union and Liberty which spans the continent from Washington to California.

Fellow citizens, we must sometimes be tolerant to folly, and patient at the sight of the extreme waywardness of men; but I confess that, when I reflect on the renown of our past history, on our present prosperity and greatness, and on what the future hath yet to unfold, and when I see that there are men who can find in all this nothing good, nothing valuable, nothing truly glorious, I feel that all their reason has fled away from them, and left the entire control over their judgment and their actions to insanity and fanaticism; and more than all, fellow citizens, if the purposes of fanatics and dis-

unionists should be accomplished, the patriotic and intelligent of our generation would seek to hide themselves from the scorn of the world, and go about to find dishonorable graves.

Fellow citizens, take courage; be of good cheer. We shall come to no such ignoble end. We shall live, and not die. During the period allotted to our several lives, we shall continue to rejoice in the return of this anniversary. The ill-omened sounds of fanaticism will be hushed; the ghastly spectres of Secession and Disunion will disappear; and the enemies of united constitutional liberty, if their hatred cannot be appeased, may prepare to have their eyeballs seared as they behold the steady flight of the American eagle, on his burnished wings, for years and years to come.

President Fillmore, it is your singularly good fortune to perform an act such as that which the earliest of your predecessors performed fifty-eight years ago. You stand where he stood; you lay your hand on the cornerstone of a building designed greatly to extend that whose cornerstone he laid. Changed, changed is everything around. The same sun, indeed, shone upon his head which now shines upon yours. The same broad river rolled at his feet, and bathes his last resting place, that now rolls at yours. But the site of this city was then mainly an open field. Streets and avenues have since been laid out and completed, squares and public grounds inclosed and ornamented, until the city which bears his name, although comparatively inconsiderable in numbers and wealth, has become quite fit to be the seat of government of a great and united people.

Sir, may the consequences of the duty which you per-

form so auspiciously to-day, equal those which flowed from his act. Nor this only; may the principles of your administration, and the wisdom of your political conduct, be such, as that the world of the present day, and all history hereafter, may be at no loss to perceive what example you have made your study.

Fellow citizens, I now bring this address to a close, by expressing to you, in the words of the great Roman orator, the deepest wish of my heart, and which I know dwells deeply in the hearts of all who hear me: "Duo modo hæc opto; unum, ut moriens populum Romanum liberum relinquam; hoc mihi majus a diis immortalibus dari nihil potest: alterum, ut ita cuique eveniat, ut de republicâ quisque mereatur."

And now, fellow citizens, with hearts void of hatred, envy, and malice toward our own countrymen, or any of them, or toward the subjects or citizens of other governments, or toward any member of the great family of man; but exulting, nevertheless, in our own peace, security, and happiness, in the grateful remembrance of the past, and the glorious hopes of the future, let us return to our homes, and with all humility and devotion offer our thanks to the Father of all our mercies, political, social, and religious.

OBJECTS OF THE MEXICAN WAR

A SPEECH DELIVERED IN THE SENATE, MARCH 23, 1848, ON THE BILL FROM THE HOUSE FOR RAISING A LOAN OF SIXTEEN MILLIONS OF DOLLARS

Mr. President:

ON FRIDAY a bill passed the Senate for raising ten regiments of new troops for the further prosecution of the war against Mexico; and we have been informed that that measure is shortly to be followed, in this branch of the Legislature, by a bill to raise twenty regiments of volunteers for the same service. I was desirous of expressing my opinions against the object of these bills, against the supposed necessity which leads to their enactment, and against the general policy which they are apparently designed to promote. Circumstances personal to myself, but beyond my control, compelled me to forego, on that day, the execution of that design. The bill now before the Senate is a measure for raising money to meet the exigencies of the government, and to provide the means, as well as for other things, for the pay and support of these thirty regiments.

Sir, the scenes through which we have passed, and are passing, here, are various. For a fortnight the world supposes we have been occupied with the ratification of a treaty of peace, and that within these walls, "the world shut out," notes of peace, and hopes of peace, nay, strong assurances of peace, and indications of peace, have been uttered to console and to cheer us. Sir, it has been over and over stated, and is public, that we have ratified a treaty, of

course a treaty of peace, and, as the country has been led to suppose, not of an uncertain, empty, and delusive peace, but of real and substantial, a gratifying and an enduring peace, a peace which would stanch the wounds of war, prevent the further flow of human blood, cut off these enormous expenses, and return our friends, and our brothers, and our children, if they be yet living, from the land of slaughter, and the land of still more dismal destruction by climate, to our firesides and our arms.

Hardly have these halcyon notes ceased upon our ears, when, in resumed public session, we are summoned to fresh warlike operations; to create a new army of thirty thousand men for the further prosecution of the war; to carry the war, in the language of the President, still more dreadfully into the vital parts of the enemy, and to press home, by fire and sword, the claims we make, and the grounds which we insist upon, against our fallen, prostrate, I had almost said, our ignoble enemy. If we may judge from the opening speech of the honorable Senator from Michigan, and from other speeches that have been made upon this floor, there has been no time, from the commencement of the war, when it has been more urgently pressed upon us, not only to maintain, but to increase, our military means; not only to continue the war, but to press it still more vigorously than at present.

Pray, what does all this mean? Is it, I ask, confessed, then—is it confessed that we are no nearer a peace than we were when we snatched up this bit of paper called, or miscalled, a treaty, and ratified it? Have we yet to fight it out to the utmost, as if nothing pacific had intervened?

I wish, sir, to treat the proceedings of this and of every department of the government with the utmost respect.

The Constitution of this government, and the exercise of its just powers in the administration of the laws under it, have been the cherished object of all my unimportant life. But, if the subject were not one too deeply interesting, I should say our proceedings here may well enough cause a smile. In the ordinary transaction of the foreign relations of this and of all other governments, the course has been to negotiate first, and to ratify afterward. This seems to be the natural order of conducting intercourse between foreign States. We have chosen to reverse this order. We ratify first, and negotiate afterward. We set up a treaty, such as we find it and choose to make it, and then send two ministers plenipotentiary to negotiate thereupon in the capital of the enemy. One would think, sir, the ordinary course of proceeding much the juster; that to negotiate, to hold intercourse, and come to some arrangement, by authorized agents, and then to submit that arrangement to the sovereign authority to which these agents are responsible, would be always the most desirable method of proceeding. It strikes me that the course we have adopted is strange, is even grotesque. So far as I know, it is unprecedented in the history of diplomatic intercourse. Learned gentlemen on the floor of the Senate, interested to defend and protect this course, may, in their extensive reading, have found examples of it. I know of none.

Sir, we are in possession, by military power, of New Mexico and California, countries belonging hitherto to the United States of Mexico. We are informed by the President that it is his purpose to retain them, to consider them as territory fit to be attached to these United States of America; and our military operations and designs now before the Senate are to enforce this claim of the Executive

of the United States. We are to compel Mexico to agree that the part of her dominions called New Mexico, and that called California, shall be ceded to us. We are in possession, as is said, and she shall yield her title to us. This is the precise object of this new army of thirty thousand men. Sir, it is the identical object, in my judgment, for which the war was originally commenced, for which it has hitherto been prosecuted, and in furtherance of which this treaty is to be used but as one means to bring about this general result; that general result depending, after all, on our own superior power, and on the necessity of submitting to any terms which we may prescribe to fallen, fallen, fallen Mexico!

Sir, the members composing the other House, the more popular branch of the Legislature, have all been elected since, I had almost said the fatal, I will say the remarkable, events of the 11th and 13th days of May, 1846. The other House has passed a resolution affirming that "the war with Mexico was begun unconstitutionally and unnecessarily by the executive government of the United States." I concur in that sentiment; I hold that to be the most recent and authentic expression of the will and opinion of the majority of the people of the United States.

There is, sir, another proposition, not so authentically announced hitherto, but, in my judgment, equally true and equally capable of demonstration; and that is, that this war was begun, has been continued, and is now prosecuted, for the great and leading purpose of the acquisition of new territory, out of which to bring new States, with their Mexican population, into this our Union of the United States.

If unavowed at first, this purpose did not remain una-

vowed long. However often it may be said that we did not go to war for conquest,

"credat Judæus Apella,
Non ego,"

yet the moment we get possession of territory we must retain it and make it our own. Now I think that this original object has not been changed, has not been varied. Sir, I think it exists in the eyes of those who originally contemplated it, and who began the war for it, as plain, as attractive to them, and from which they no more avert their eyes now than they did then or have done at any time since. We have compelled a treaty of cession; we know in our consciences that it is compelled. We use it as an instrument and an agency, in conjunction with other instruments and other agencies of a more formidable and destructive character, to enforce the cession of Mexican territory, to acquire territory for new States to be added to this Union. We know, every intelligent man knows, that there is no stronger desire in the breast of a Mexican citizen than to retain the territory which belongs to the Republic. We know that the Mexican people will part with it, if part they must, with regret, with pangs of sorrow. That we know; we know it is all forced; and, therefore, because we know it must be forced, because we know that (whether the government, which we consider our creature, do or do not agree to it) the Mexican people will never accede to the terms of this treaty but through the impulse of absolute necessity, and the impression made upon them by absolute and irresistible force, therefore we purpose to overwhelm them with another army. We purpose to raise another army of ten thousand regulars and twenty thou-

sand volunteers, and to pour them in and upon the Mexican people.

Now, sir, I should be happy to agree, notwithstanding all this tocsin, and all this cry of all the Sempronіuses in the land, that their "voices are still for war"—I should be happy to agree, and substantially I do agree, to the opinion of the Senator from South Carolina. I think I have myself uttered the sentiment, within a fortnight, to the same effect, that, after all, the war with Mexico is substantially over, that there can be no more fighting. In the present state of things, my opinion is that the people of this country will not sustain the war. They will not go for its heavy expenses; they will not find any gratification in putting the bayonet to the throats of the Mexican people. For my part, I hope the ten regiment bill will never become a law. Three weeks ago I should have entertained that hope with the utmost confidence; events instruct me to abate my confidence. I still hope it will not pass.

And here, I dare say, I shall be called by some a "Mexican Whig." The man who can stand up here and say that he hopes that what the administration projects, and the further prosecution of the war with Mexico requires, may not be carried into effect, must be an enemy to his country, or what gentlemen have considered the same thing, an enemy to the President of the United States, and to his administration and his party. He is a Mexican. Sir, I think very badly of the Mexican character, high and low, out and out; but names do not terrify me. Besides, if I have suffered in this respect, if I have rendered myself subject to the reproaches of these stipendiary presses, these hired abusers of the motives of public men, I have the honor, on this occasion, to be in very respectable com-

pany. In the reproachful sense of that term, I don't know a greater Mexican in this body than the honorable Senator from Michigan, the chairman of the Committee on Military Affairs.

Mr. Cass—Will the gentleman be good enough to explain what sort of a Mexican I am?

On the resumption of the bill in the Senate the other day, the gentleman told us that its principal object was to frighten Mexico; it would touch his humanity too much to hurt her! He would frighten her—

Mr. Cass—Does the gentleman affirm that I said that?

Yes; twice.

Mr. Cass—No, sir, I beg your pardon, I did not say it. I did not say it would touch my humanity to hurt her.

Be it so.

Mr. Cass—Will the honorable Senator allow me to repeat my statement of the object of the bill? I said it was twofold: first, that it would enable us to prosecute the war, if necessary; and, second, that it would show Mexico we were prepared to do so; and thus, by its moral effect, would induce her to ratify the treaty.

The gentleman said, that the principal object of the bill was to frighten Mexico, and that this would be more humane than to harm her.

Mr. Cass—That's true.

Well, sir, the remarkable characteristic of that speech, that which makes it so much a Mexican speech, is, that the gentleman spoke it in the hearing of Mexico, as well as in the hearing of this Senate. We are accused here, because what we say is heard by Mexico, and Mexico derives

encouragement from what is said here. And yet the honorable member comes forth and tells Mexico that the principal object of the bill is to frighten her! The words have passed along the wires; they are on the Gulf, and are floating away to Vera Cruz; and when they get there, they will signify to Mexico, "After all, ye good Mexicans, my principal object is to frighten you; and to the end that you may not be frightened too much, I have given you this indication of my purpose."

But, sir, in any view of this case, in any view of the proper policy of this government, to be pursued according to any man's apprehension and judgment, where is the necessity for this augmentation, by regiments, of the military force of the country? I hold in my hand here a note, which I suppose to be substantially correct, of the present military force of the United States. I cannot answer for its entire accuracy, but I believe it to be substantially according to fact. We have twenty-five regiments of regular troops, of various arms; if full, they would amount to 28,960 rank and file, and including officers to 30,296 men. These, with the exception of six or seven hundred men, are now all out of the United States and in field service in Mexico, or en route to Mexico. These regiments are not full; casualties and the climate have sadly reduced their numbers. If the recruiting service were now to yield ten thousand men, it would not more than fill up these regiments, so that every brigadier and colonel and captain should have his appropriate and his full command. Here is a call, then, on the country now for the enlistment of ten thousand men, to fill up the regiments in the foreign service of the United States.

I understand, sir, that there is a report from General

Scott; from General Scott, a man who has performed the most brilliant campaign on recent military record, a man who has warred against the enemy, warred against the climate, warred against a thousand unpropitious circumstances, and has carried the flag of his country to the capital of the enemy, honorably, proudly, *humanely*, to his own permanent honor, and the great military credit of his country—General Scott; and where is he? At Puebla! at Puebla, undergoing an inquiry before his inferiors in rank, and other persons without military rank, while the high powers he has exercised, and exercised with so much distinction, are transferred to another, I do not say to one unworthy of them, but to one inferior in rank, station, and experience, to himself.

But General Scott reports, as I understand, that, in February, there were twenty thousand regular troops under his command and en route, and we have thirty regiments of volunteers for the war. If full, this would make thirty-four thousand men, or, including officers, thirty-five thousand. So that, if the regiments were full, there is at this moment a number of troops, regular and volunteer, of not less than fifty-five or sixty thousand men, including recruits on the way. And with these twenty thousand men in the field, of regular troops, there were also ten thousand volunteers; making, of regulars and volunteers under General Scott, thirty thousand men. The Senator from Michigan knows these things better than I do, but I believe this is very nearly the fact. Now all these troops are regularly officered; there is no deficiency, in the line or in the staff, of officers. They are all full. Where there is any deficiency it consists of men.

Now, sir, there may be a plausible reason for saying that

there is difficulty in recruiting at home for the supply of deficiency in the volunteer regiments. It may be said that volunteers choose to enlist under officers of their own knowledge and selection; they do not incline to enlist as individual volunteers, to join regiments abroad, under officers of whom they know nothing. There may be something in that; but pray what conclusion does it lead to, if not to this, that all these regiments must moulder away, by casualties or disease, until the privates are less in number than the officers themselves.

But however that may be with respect to volunteers, in regard to recruiting for the regular service, in filling up the regiments by pay and bounties according to existing laws, or new laws, if new ones are necessary, there is no reason on earth why we should now create five hundred new officers, for the purpose of getting ten thousand more men. The officers are already there; in that respect there is no deficiency. All that is wanted is men, and there is place for the men; and I suppose no gentleman, here or elsewhere, thinks that recruiting will go on faster than would be necessary to obtain men to fill up the deficiencies in the regiments abroad.

But now, sir, what do we want of a greater force than we have in Mexico? I am not saying, What do we want of a force greater than we can supply? but, What is the object of bringing these new regiments into the field? What do we propose? There is no army to fight. I suppose there are not five hundred men under arms in any part of Mexico; probably not half that number, except in one place. Mexico is prostrate. It is not the government that resists us. Why, it is notorious that the government of Mexico is on our side, that it is an instrument by which

we hope to establish such a peace, and accomplish such a treaty, as we like. As far as I understand the matter, the government of Mexico owes its life and breath and being to the support of our arms, and to the hope, I do not say how inspired, that somehow or other, and at no distant period, she will have the pecuniary means of carrying it on, from our three millions, or our twelve millions, or from some of our other millions.

What do we propose to do, then, with these thirty regiments which it is designed to throw into Mexico? Are we going to cut the throats of her people? Are we to thrust the sword deeper and deeper into the "vital parts" of Mexico? What is it proposed to do? Sir, I can see no object in it; and yet, while we are pressed and urged to adopt this proposition to raise ten and twenty regiments, we are told, and the public is told, and the public believes, that we are on the verge of a safe and an honorable peace. Every one looks every morning for tidings of a confirmed peace, or of confirmed hopes of peace. We gather it from the administration, and from every organ of the administration from Dan to Beersheba. And yet warlike preparations, the incurring of expenses, the imposition of new charges upon the treasury, are pressed here, as if peace were not in all our thoughts, at least not in any of our expectations.

Now, sir, I propose to hold a plain talk to-day; and I say that, according to my best judgment, the object of the bill is patronage, office, the gratification of friends. This very measure for raising ten regiments creates four or five hundred officers; colonels, subalterns, and not them only, for for all these I feel some respect, but there are also paymasters, contractors, persons engaged in the transportation service, commissaries, even down to sutlers, *et id genus*

omne, people who handle the public money without facing the foe, one and all of whom are true descendants, or if not, true representatives, of Ancient Pistol, who said,

"I shall sutler be
Unto the camp, and profits will accrue."

Sir, I hope, with no disrespect for the applicants, and the aspirants, and the patriots (and among them are some sincere patriots) who would fight for their country, and those others who are not ready to fight, but who are willing to be paid—with due respect for all of them according to their several degrees and their merits, I hope they will all be disappointed. I hope that, as the pleasant season advances, the whole may find it for their interest to place themselves, of mild mornings, in the cars, and take their destination to their respective places of honorable private occupation and of civil employment. They have my good wishes that they may find the way to their homes from the Avenue and the Capitol, and from the purlieus of the President's house, in good health themselves, and that they may find their families all very happy to receive them.

But, sir, to speak more seriously, this war was waged for the object of creating new States, on the southern frontier of the United States, out of Mexican territory, and with such population as could be found resident thereupon. I have opposed this object. I am against all accessions of territory to form new States. And this is no matter of sentimentality, which I am to parade before mass meetings or before my constituents at home. It is not a matter with me of declamation, or of regret, or of expressed repugnance. It is a matter of firm, unchangeable purpose. I yield nothing to the force of circumstances that have oc-

curred, or that I can consider as likely to occur. And therefore I say, sir, that, if I were asked to-day whether, for the sake of peace, I would take a treaty for adding two new States to the Union on our southern border, I would say, *No!* distinctly, No! And I wish every man in the United States to understand that to be my judgment and my purpose.

I said upon our *southern* border, because the present proposition takes that locality. I would say the same of the western, the northeastern, or of any other border. I resist to-day, and forever, and to the end, any proposition to add any foreign territory, south or west, north or east, to the States of this Union, as they are constituted and held together under the Constitution. I do not want the colonists of England on the north; and as little do I want the population of Mexico on the south. I resist and reject all, and all with equal resolution. Therefore I say, that, if the question were put to me to-day whether I would take peace under the present state of the country, distressed as it is, during the existence of a war odious as this is, under circumstances so afflictive as now exist to humanity, and so disturbing to the business of those whom I represent—I say still, if it were put to me whether I would have peace, with new States, I would say, No! no! And that because, sir, in my judgment, there is no necessity of being driven into that dilemma. Other gentlemen think differently. I hold no man's conscience; but I mean to make a clean breast of it myself; and I protest that I see no reason, I believe there is none, why we cannot obtain as safe a peace, as honorable and as prompt a peace, without territory as with it. The two things are separable. There is no necessary connection between them. Mexico

does not wish us to take her territory, while she receives our money. Far from it. She yields her assent, if she yields it at all, reluctantly, and we all know it. It is the result of force, and there is no man here who does not know that. And let me say, sir, that, if this Trist paper shall finally be rejected in Mexico, it is most likely to be because those who under our protection hold the power there cannot persuade the Mexican Congress or people to agree to this cession of territory. The thing most likely to break up what we now expect to take place is the repugnance of the Mexican people to part with their territory. They would prefer to keep their territory, and that we should keep our money; as I prefer we should keep our money, and they their territory. We shall see. I pretend to no powers of prediction. I do not know what may happen. The times are full of strange events. But I think it certain that, if the treaty which has gone to Mexico shall fail to be ratified, it will be because of the aversion of the Mexican Congress, or the Mexican people, to cede their territory, or any part of it, belonging to their Republic.

I have said that I would rather have no peace for the present, than have a peace which brings territory for new States; and the reason is, that we shall get peace as soon without territory as with it, more safe, more durable, and vastly more honorable to us, the great Republic of the world.

But we hear gentlemen say, We must have some territory, the people demand it. I deny it; at least, I see no proof of it whatever. I do not doubt that there are individuals of an enterprising character, disposed to emigrate, who know nothing about New Mexico but that it is far off, and nothing about California but that it is still further off,

who are tired of the dull pursuits of agriculture and of civil life; that there are hundreds and thousands of such persons to whom whatsoever is new and distant is attractive. They feel the spirit of borderers; and the spirit of a borderer, I take it, is to be tolerably contented with his condition where he is, until somebody goes to regions beyond him; and then he is all eagerness to take up his traps and go still further than he who has thus got in advance of him. With such men the desire to emigrate is an irresistible passion. At least so thought that sagacious observer of human nature, M. de Talleyrand, when he travelled in this country in 1794.

But I say I do not find anywhere any considerable and respectable body of persons who want more territory, and such territory. Twenty-four of us last year in this House voted against the prosecution of the war for territory, because we did not want it, both Southern and Northern men. I believe the Southern gentlemen who concurred in that vote found themselves, even when they had gone against what might be supposed to be local feelings and partialities, sustained on the general policy of not seeking territory, and by the acquisition of territory bringing into our politics certain embarrassing and embroiling questions and considerations. I do not learn that they suffered from the advocacy of such a sentiment. I believe they were supported in it; and I believe that through the greater part of the South, and even of the Southwest, there is no prevalent opinion in favor of acquiring territory, and such territory, and of the augmentation of our population by such an accession. And such, I need not say, is, if not the undivided, the preponderating sentiment of all the North.

But it is said we must take territory for the sake of

peace. We must take territory. It is the will of the President. If we do not now take what he offers, we may fare worse. Mr. Polk will take no less, that he is fixed upon. He is immovable. He—has—put—down—his—foot! Well, sir, he put it down upon "fifty-four forty," but it didn't stay. I speak of the President, as of all Presidents, without disrespect. I know of no reason why his opinion and his will, his purpose, declared to be final, should control us, any more than our purpose, from equally conscientious motives, and under as high responsibilities, should control him. We think he is firm, and will not be moved. I should be sorry, sir, very sorry indeed, that we should entertain more respect for the firmness of the individual at the head of the government than we entertain for our own firmness. He stands out against us. Do we fear to stand out against him? For one, I do not. It appears to me to be a slavish doctrine. For one, I am willing to meet the issue, and go to the people all over this broad land. Shall we take peace without new States, or refuse peace without new States? I will stand upon that, and trust the people. And I do that because I think it right, and because I have no distrust of the people. I am not unwilling to put it to their sovereign decision and arbitration. I hold this to be a question vital, permanent, elementary, in the future prosperity of the country and the maintenance of the Constitution; and I am willing to trust that question to the people. I prefer that it should go to them, because, if what I take to be a great constitutional principle, or what is essential to its maintenance, is to be broken down, let it be the act of the people themselves; it shall never be my act. I, therefore, do not distrust the people. I am willing to take their sentiment, from the Gulf to the British Prov-

inces, and from the ocean to the Missouri: Will you continue the war for territory, to be purchased, after all, at an enormous price, a price a thousand times the value of all its purchases, or take peace, contenting yourselves with the honor we have reaped by the military achievements of the army? Will you take peace without territory, and preserve the integrity of the Constitution of the country? I am entirely willing to stand upon that question. I will therefore take the issue: Peace, with no new States, keeping our own money ourselves, or war till new States shall be acquired, and vast sums paid. That is the true issue. I am willing to leave that before the people and to the people, because it is a question for themselves. If they support me and think with me, very well. If otherwise, if they will have territory and add new States to the Union, let them do so; and let them be the artificers of their own fortune, for good or for evil.

But, sir, we tremble before executive power. The truth cannot be concealed. We tremble before executive power! Mr. Polk will take no less than this. If we do not take this, the king's anger may kindle, and he will give us what is worse.

But now, sir, who and what is Mr. Polk? I speak of him with no manner of disrespect. I mean, thereby, only to ask who and what is the President of the United States for the current moment? He is in the last year of his administration. Formally, officially, it can only be drawn out till the fourth of March, while really and substantially we know that two short months will, or may, produce events that will render the duration of that official term of very little importance. We are on the eve of a Presidential election. That machinery which is employed to collect

public opinion or party opinion will be put in operation two months hence. We shall see its result. It may be that the present incumbent of the Presidential office will be again presented to his party friends and admirers for their suffrages for the next Presidential term. I do not say how probable or improbable this is. Perhaps it is not entirely probable. Suppose this not to be the result, what then? Why, then Mr. Polk becomes as absolutely insignificant as any respectable man among the public men of the United States. Honored in private life, valued for his private character, respectable, never eminent, in public life, he will, from the moment a new star arises, have just as little influence as you or I; and, so far as I am concerned, that certainly is little enough.

Sir, political partisans, and aspirants, and office-seekers, are not sunflowers. They do not

> "turn to their god when he sets
> The same look which they turned when he rose."

No, sir, if the respectable gentleman now at the head of the government be nominated, there will be those who will commend his consistency, who will be bound to maintain it, for the interest of his party friends will require it. It will be done. If otherwise, who is there in the whole length and breadth of the land that will care for the consistency of the present incumbent of the office? There will then be new objects. "Manifest destiny" will have pointed out some other man. Sir, the eulogies are now written, the commendations are already elaborated. I do not say everything fulsome, but everything panegyrical, has already been written out, with blanks for names, to be filled when the convention shall adjourn. When "manifest destiny" shall

be unrolled, all these strong panegyrics, wherever they may light, made beforehand, laid up in pigeonholes, studied, framed, emblazoned, and embossed, will all come out; and then there will be found to be somebody in the United States whose merits have been strangely overlooked, marked out by Providence, a kind of miracle, while all will wonder that nobody ever thought of him before, as a fit, and the only fit, man to be at the head of this great Republic!

I shrink not, therefore, from anything that I feel to be my duty, from any apprehension of the importance and imposing dignity, and the power of will, ascribed to the present incumbent of office. But I wish we possessed that power of will. I wish we had that firmness. Yes, sir, I wish we had adherence. I wish we could gather something from the spirit of our brave forces, who have met the enemy under circumstances most adverse and have stood the shock. I wish we could imitate Zachary Taylor in his bivouac on the field of Buena Vista. He said he "would remain for the night; he would feel the enemy in the morning, and try his position." I wish, before we surrender, we could make up our minds to "feel the enemy, and try his position," and I think we should find him, as Taylor did, under the early sun, on his way to San Luis Potosi. That is my judgment.

But, sir, I come to the all-absorbing question, more particularly, of the creation of new States.

Some years before I entered public life, Louisiana had been obtained under the treaty with France. Shortly after, Florida was obtained under the treaty with Spain. These two countries were situated on our frontier, and commanded the outlets of the great rivers which flow into the Gulf. As I have had occasion to say, in the first of these instances, the President of the United States supposed that an amend-

ment of the Constitution was required. He acted upon that supposition. Mr. Madison was Secretary of State, and upon the suggestion of the President, proposed that the proper amendment to the Constitution should be submitted, to bring Louisiana into the Union. Mr. Madison drew it, and submitted it to Mr. Adams, as I have understood. Mr. Madison did not go upon any general idea that new States might be admitted; he did not proceed to a general amendment of the Constitution in that respect. The amendment which he proposed and submitted to Mr. Adams was a simple declaration, by a new article, that "the Province of Louisiana is hereby declared to be part and parcel of the United States." But public opinion, seeing the great importance of the acquisition, took a turn favorable to the affirmation of the power. The act was acquiesced in, and Louisiana became a part of the Union, without any amendment of the Constitution.

On the example of Louisiana, Florida was admitted.

Now, sir, I consider those transactions as passed, settled, legalized. There they stand as matters of political history. They are facts against which it would be idle at this day to contend.

My first agency in matters of this kind was upon the proposition for admitting Texas into this Union. That I thought it my duty to oppose, upon the general ground of opposing all formation of new States out of foreign territory, and, I may add, and I ought to add in justice, of States in which slaves were to be represented in the Congress of the United States. I was opposed to this on the ground of its inequality. It happened to me, sir, to be called upon to address a political meeting in New York, in 1837, soon after the recognition of Texan independence.

I state now, sir, what I have often stated before, that no man, from the first, has been a more sincere wellwisher to the government and the people of Texas than myself. I looked upon the achievement of their independence in the battle of San Jacinto as an extraordinary, almost a marvellous, incident in the affairs of mankind. I was among the first disposed to acknowledge her independence. But from the first, down to this moment, I have opposed, as far as I was able, the annexation of new States to this Union. I stated my reasons on the occasion now referred to, in language which I have now before me, and which I beg to present to the Senate.

Mr. Webster here read the passage from his speech at Niblo's Saloon, New York, beginning, "But it cannot be disguised, gentlemen, that a desire, or an intention, is already manifested to annex Texas to the United States."

Well, sir, for a few years I held a position in the executive administration of the government. I left the Department of State in 1843, in the month of May. Within a month after, another (an intelligent gentleman, for whom I cherished a high respect, and who came to a sad and untimely end) had taken my place, I had occasion to know, not officially, but from circumstances, that the annexation of Texas was taken up by Mr. Tyler's administration as an administration measure. It was pushed, pressed, insisted on; and I believe the honorable gentleman to whom I have referred had something like a passion for the accomplishment of this purpose. And I am afraid that the President of the United States at that time suffered his ardent feelings not a little to control his more prudent judgment. At any rate, I saw, in 1843, that annexation had become a

purpose of the administration. I was not in Congress nor in public life. But, seeing this state of things, I thought it my duty to admonish the country, so far as I could, of the existence of that purpose. There are gentlemen at the North, many of them, there are gentlemen now in the Capitol, who know that, in the summer of 1843, being fully persuaded that this purpose was embraced with zeal and determination by the executive department of the government of the United States, I thought it my duty, and asked them to concur with me in the attempt, to make that purpose known to the country. I conferred with gentlemen of distinction and influence. I proposed means for exciting public attention to the question of annexation, before it should have become a party question; for I had learned that, when any topic becomes a party question, it is in vain to argue upon it.

But the optimists and the quietists, and those who said, All things are well, and let all things alone, discouraged, discountenanced, and repressed any such effort. The North, they said, could take care of itself; the country could take care of itself, and would not sustain Mr. Tyler in his project of annexation. When the time should come, they said, the power of the North would be felt, and would be found sufficient to resist and prevent the consummation of the measure. And I could now refer to paragraphs and articles in the most respectable and leading journals of the North, in which it was attempted to produce the impression that there was no danger; there could be no addition of new States, and men need not alarm themselves about that.

I was not in Congress, sir, when the preliminary resolutions, providing for the annexation of Texas, passed. I only know that, up to a very short period before the pas-

sage of those resolutions, the impression in that part of the country of which I have spoken was, that no such measure could be adopted. But I have found, in the course of thirty years' experience, that whatever measures the executive government may embrace and push are quite likely to succeed in the end. There is always a giving way somewhere. The executive government acts with uniformity, with steadiness, with entire unity of purpose. And sooner or later, often enough, and, according to my construction of our history, quite too often, it effects its purposes. In this way it becomes the predominating power of the government.

Well, sir, just before the commencement of the present administration, the resolutions for the annexation of Texas were passed in Congress. Texas complied with the provisions of those resolutions, and was here, or the case was here, on the 22d day of December, 1845, for her final admission into the Union, as one of the States. I took occasion then to say, that I hoped I had shown all proper regard for Texas; that I had been certainly opposed to annexation; that, if I should go over the whole matter again, I should have nothing new to add; that I had acted, all along, under the unanimous declaration of all parties, and of the Legislature of Massachusetts; that I thought there must be some limit to the extent of our territories, and that I wished this country should exhibit to the world the example of a powerful Republic, without greediness and hunger of empire. And I added, that while I held, with as much faithfulness as any citizen of the country, to all the original arrangements and compromises of the Constitution under which we live, I never could, and I never should, bring myself to be in favor of the admission of any States into the Union as slaveholding States; and I might have added, any States

at all, to be formed out of Territories not now belonging to us.

Now, as I have said, in all this I acted under the resolutions of the State of Massachusetts, certainly concurrent with my own judgment, so often repeated, and reaffirmed by the unanimous consent of all men of all parties, that I could not well go through the series, pointing out, not only the impolicy, but the unconstitutionality, of such annexation. If a State proposes to come into the Union, and to come in as a slave State, then there is an augmentation of the inequality in the representation of the people; an inequality already existing, with which I do not quarrel, and which I never will attempt to alter, but shall preserve as long as I have a vote to give, or any voice in this government, because it is a part of the original compact. Let it stand. But then there is another consideration of vastly more general importance even than that; more general, because it affects all the States, free and slaveholding; and it is, that if States formed out of Territories thus thinly populated come into the Union, they necessarily and inevitably break up the relation existing between the two branches of the government, and destroy its balance. They break up the intended relation between the Senate and the House of Representatives. If you bring in new States, any State that comes in must have two Senators. She may come in with fifty or sixty thousand people, or more. You may have, from a particular State, more Senators than you have Representatives. Can anything occur to disfigure and derange the form of government under which we live more signally than that? Here would be a Senate bearing no proportion to the people, out of all relation to them, by the addition of new States; from some of them only one

Representative, perhaps, and two Senators, whereas the larger States may have ten, fifteen, or even thirty Representatives, and but two Senators. The Senate, augmented by these new Senators coming from States where there are few people, becomes an odious oligarchy. It holds power without any adequate constituency. Sir, it is but "borough-mongering" upon a large scale. Now, I do not depend upon theory; I ask the Senate and the country to look at facts, to see where we were when we made our departure three years ago, and where we now are; and I leave it to the imagination to conjecture where we shall be.

We admitted Texas—one State for the present; but, sir, if you refer to the resolutions providing for the annexation of Texas, you find a provision that it shall be in the power of Congress hereafter to make four new States out of Texan territory. Present and prospectively, five new States, with ten Senators, may come into the Union out of Texas. Three years ago we did this; we now propose to make two States. Undoubtedly, if we take, as the President recommends, New Mexico and California, there must then be four new Senators. We shall then have provided, in these Territories out of the United States along our southern borders, for the creation of States enough to send fourteen Senators into this Chamber. Now, what will be the relation between these Senators and the people they represent, or the States from which they come? I do not understand that there is any very accurate census of Texas. It is generally supposed to contain one hundred and fifty thousand persons. I doubt whether it contains above one hundred thousand.

Mr. Magnum—It contains one hundred and forty-nine thousand.

My honorable friend on my left says, a hundred and forty-nine thousand. I put it down, then, one hundred and fifty thousand. Well, sir, Texas is not destined, probably, to be a country of dense population. We will suppose it to have at the present time a population of near one hundred and fifty thousand. New Mexico may have sixty or seventy thousand inhabitants; say seventy thousand. In California, there are not supposed to be above twenty-five thousand men; but undoubtedly, if this territory should become ours, persons from Oregon, and from our Western States, will find their way to San Francisco, where there is some good land, and we may suppose they will shortly amount to sixty or seventy thousand. We will put them down at seventy thousand. Then the whole territory in this estimate, which is as high as any man puts it, will contain two hundred and ninety thousand persons, and they will send us, whenever we ask for them, fourteen Senators; a population less than that of the State of Vermont, and not the eighth part of that of New York. Fourteen Senators, and not as many people as Vermont! and no more people than New Hampshire! and not so many people as the good State of New Jersey!

But then, sir, Texas claims to the line of the Rio Grande, and if it be her true line, why then of course she absorbs a considerable part, nay, the greater part, of the population of what is now called New Mexico. I do not argue the question of the true southern or western line of Texas; I only say, that it is apparent to everybody who will look at the map, and learn anything of the matter, that New Mexico cannot be divided by this river, the Rio Grande, which is a shallow, fordable, insignificant stream, creeping along through a narrow valley, at the base of enormous moun-

tains. New Mexico must remain together; it must be a State, with its seventy thousand people, and so it will be; and so will California.

But then, sir, suppose Texas to remain a unit, and but one State for the present; still we shall have three States, Texas, New Mexico, and California. We shall have six Senators, then, for less than three hundred thousand people. We shall have as many Senators for three hundred thousand people in that region as we have for New York, Pennsylvania, and Ohio, with four or five millions of people; and that is what we call an equal representation! Is not this enormous? Have gentlemen considered this? Have they looked at it? Are they willing to look it in the face, and then say they embrace it? I trust, sir, the people will look at it and consider it. And now let me add, that this disproportion can never be diminished, it must remain forever. How are you going to diminish it? Why, here is Texas, with a hundred and forty-nine thousand people, with one State. Suppose that population should flow into Texas, where will it go? Not to any dense point, but to be spread over all that region, in places remote from the Gulf, in places remote from what is now the capital of Texas; and therefore, as soon as there are in other portions of Texas people enough within our common construction of the Constitution and our practice in respect to the admission of States, my honorable friend from Texas [Mr. Rusk] will have a new State, and I have no doubt he has chalked it out already.

As to New Mexico, its population is not likely to increase. It is a settled country; the people living along in the bottom of the valley on the sides of a little stream, a garter of land only on one side and the other, filled by

coarse landholders and miserable peons. It can sustain, not only under this cultivation, but under any cultivation that our American race would ever submit to, no more people than are there now. There will, then, be two Senators for sixty thousand inhabitants in New Mexico to the end of our lives and to the end of the lives of our children.

And how is it with California? We propose to take California, from the forty-second degree of north latitude down to the thirty-second. We propose to take ten degrees along the coast of the Pacific. Scattered along the coast for that great distance are settlements and villages and ports; and in the rear all is wilderness and barrenness, and Indian country. But if, just about San Francisco, and perhaps Monterey, emigrants enough should settle to make up one State, then the people five hundred miles off would have another State. And so this disproportion of the Senate to the people will go on, and must go on, and we cannot prevent it.

I say, sir, that, according to my conscientious conviction, we are now fixing on the Constitution of the United States, and its frame of government, a monstrosity, a disfiguration, an enormity! Sir, I hardly dare trust myself. I don't know but I may be under some delusion. It may be the weakness of my eyes that forms this monstrous apparition. But, if I may trust myself, if I can persuade myself that I am in my right mind, then it does appear to me that we in this Senate have been and are acting, and are likely to be acting hereafter, and immediately, a part which will form the most remarkable epoch in the history of our country. I hold it to be enormous, flagrant, an outrage upon all the principles of popular republican govern-

ment, and on the elementary provisions of the Constitution under which we live, and which we have sworn to support.

But then, sir, what relieves the case from this enormity? What is our reliance? Why, it is that we stipulate that these new States shall only be brought in at a suitable time. And pray, what is to constitute the suitableness of time? Who is to judge of it? I tell you, sir, that suitable time will come when the preponderance of party power here makes it necessary to bring in new States. Be assured it will be a suitable time when votes are wanted in this Senate. We have had some little experience of that. Texas came in at a "suitable time," a very suitable time! Texas was finally admitted in December, 1845. My friend near me here, for whom I have a great regard, and whose acquaintance I have cultivated with pleasure [Mr. Rusk], took his seat in March, 1846, with his colleague. In July, 1846, these two Texan votes turned the balance in the Senate, and overthrew the tariff of 1842, in my judgment the best system of revenue ever established in this country. Gentlemen on the opposite side think otherwise. They think it fortunate. They think that was a suitable time, and they mean to take care that other times shall be equally suitable. I understand it perfectly well. That is the difference of opinion between me and these honorable gentlemen. To their policy, their objects, and their purposes the time was suitable, and the aid was efficient and decisive.

Sir, in 1850 perhaps a similar question may be agitated here. It is not likely to be before that time, but agitated it will be then, unless a change in the administration of the government shall take place. According to my apprehension, looking at general results as flowing from our estab-

lished system of commerce and revenue, in two years from this time we shall probably be engaged in a new revision of our system: in the work of establishing, if we can, a tariff of specific duties; of protecting, if we can, our domestic industry and the manufactures of the country; in the work of preventing, if we can, the overwhelming flood of foreign importations. Suppose that to be part of the future: that would be exactly the "suitable time," if necessary, for two Senators from New Mexico to make their appearance here!

But, again, we hear another halcyon, soothing tone, which quiets none of my alarms, assuages none of my apprehensions, commends me to my nightly rest with no more resignation. And that is, the plea that we may trust the popular branch of the Legislature, we may look to the House of Representatives, to the Northern and Middle States and even the sound men of the South, and trust them to take care that States be not admitted sooner than they should be, or for party purposes. I am compelled, by experience, to distrust all such reliances. If we cannot rely on ourselves, when we have the clear constitutional authority competent to carry us through, and the motives intensely powerful, I beg to know how we can rely on others. Have we more reliance on the patriotism, the firmness, of others, than on our own?

Besides, experience shows us that things of this sort may be sprung upon Congress and the people. It was so in the case of Texas. It was so in the Twenty-eighth Congress. The members of that Congress were not chosen to decide the question of annexation or no annexation. They came in on other grounds, political and party, and were supported for reasons not connected with that question. What then? The administration sprung upon them the

question of annexation. It obtained a snap judgment upon it, and carried the measure of annexation. That is indubitable, as I could show by many instances, of which I shall state only one.

Four gentlemen from the State of Connecticut were elected before the question arose, belonging to the dominant party. They had not been here long before they were committed to annexation; and when it was known in Connecticut that annexation was in contemplation, remonstrances, private, public, and legislative, were uttered, in tones that any one could hear who could hear thunder. Did they move them? Not at all. Every one of them voted for annexation! The election came on, and they were turned out, to a man. But what did those care who had had the benefit of their votes? Such agencies, if it be not more proper to call them such instrumentalities, retain respect no longer than they continue to be useful.

Sir, we take New Mexico and California; who is weak enough to suppose that there is an end? Don't we hear it avowed every day, that it would be proper also to take Sonora, Tamaulipas, and other provinces of Northern Mexico? Who thinks that the hunger for dominion will stop here of itself? It is said, to be sure, that our present acquisitions will prove so lean and unsatisfactory, that we shall seek no further. In my judgment, we may as well say of a rapacious animal, that, if he has made one unproductive hunt, he will not try for a better foray.

But further. There are some things one can argue against with temper, and submit to, if overruled, without mortification. There are other things that seem to affect one's consciousness of being a sensible man, and to imply a disposition to impose upon his common-sense.

And of this class of topics, or pretences, I have never heard of anything, and I cannot conceive of anything, more ridiculous in itself, more absurd, and more affrontive to all sober judgment, than the cry that we are getting indemnity by the acquisition of New Mexico and California. I hold they are not worth a dollar; and we pay for them vast sums of money! We have expended, as everybody knows, large treasures in the prosecution of the war; and now what is to constitute this indemnity? What do gentlemen mean by it? Let us see a little how this stands. We get a country; we get, in the first instance, a cession, or an acknowledgment of boundary (I care not which way you state it) of the country between the Nueces and the Rio Grande. What this country is appears from a publication made by a gentleman in the other House [Major Gaines]. He speaks of the country in the following manner:

"The country from the Nueces to the valley of the Rio Grande is poor, sterile, sandy, and barren, with not a single tree of any size or value on our whole route. The only tree which we saw was the musquit tree, and very few of these. The musquit is a small tree, resembling an old and decayed peach tree. The whole country may be truly called a perfect waste, uninhabited and uninhabitable. There is not a drop of running water between the two rivers, except in the two small streams of San Salvador and Santa Gertrudis, and these only contain water in the rainy season. Neither of them had running water when we passed them. The chaparral commences within forty or fifty miles of the Rio Grande. This is poor, rocky, and sandy; covered with prickly pear, thistles, and almost every sticking thing, constituting a thick and perfectly impenetrable undergrowth. For any useful or agricultural purpose, the country is not worth a sou.

"So far as we were able to form any opinion of this desert upon the other routes which had been travelled, its character, everywhere between the two rivers, is pretty much the same. We learned that the route pursued by General Taylor, south of ours, was through a country similar to that through which we passed; as also was that travelled by General Wood from San Antonio to Presidio on the Rio Grande. From what we both saw and heard, the whole command came to the conclusion which I have already expressed, that it was worth nothing. I have no hesitation in saying, that I would not hazard the life of one valuable and useful man for every foot of land between San Patricio and the valley of the Rio Grande. The country is not now, and can never be, of the slightest value."

Major Gaines has been there lately. He is a competent observer. He is contradicted by nobody. And so far as that country is concerned, I take it for granted that it is not worth a dollar.

Now of New Mexico, what of that? Forty-nine fiftieths, at least, of the whole of New Mexico, are a barren waste, a desert plain of mountain, with no wood, no timber. Little fagots for lighting a fire are carried thirty or forty miles on mules. There is no fall of rain there, as in temperate climates. It is Asiatic in scenery altogether: enormously high mountains, running up some of them ten thousand feet, with narrow valleys at their bases, through which streams sometimes trickle along. A strip, a garter, winds along, through which runs the Rio Grande, from far away up in the Rocky Mountains to latitude 33°, a distance of three or four hundred miles. There these sixty thousand persons reside. In the mountains on the right and left are streams which, obeying the natural tendency as tributaries, should flow into the Rio Grande, and which,

in certain seasons, when rains are abundant, do, some of them, actually reach the Rio Grande; while the greater part always, and all for the greater part of the year, never reach an outlet to the sea, but are absorbed in the sands and desert plains of the country. There is no cultivation there. There is cultivation where there is artificial watering or irrigation, and nowhere else. Men can live only in the narrow valley, and in the gorges of the mountains which rise round it, and not along the course of the streams which lose themselves in the sands.

Now there is no public domain in New Mexico, not a foot of land, to the soil of which we shall obtain title. Not an acre becomes ours when the country becomes ours. More than that, the country is as full of people, such as they are, as it is likely to be. There is not the least thing in it to invite settlement from the fertile valley of the Mississippi. And I undertake to say, there would not be two hundred families of persons who would emigrate from the United States to New Mexico, for agricultural purposes, in fifty years. They could not live there. Suppose they were to cultivate the lands; they could only make them productive in a slight degree by irrigation or artificial watering. The people there produce little, and live on little. That is not the characteristic, I take it, of the people of the Eastern or of the Middle States, or of the valley of the Mississippi. They produce a good deal, and they consume a good deal.

Again, sir, New Mexico is not like Texas. I have hoped, and I still hope, that Texas will be filled up from among ourselves, not with Spaniards, not with peons; that its inhabitants will not be Mexican landlords with troops of slaves, predial or otherwise.

Mr. Rusk here rose, and said that he disliked to interrupt the Senator, and therefore he had said nothing while he was describing the country between the Nueces and the Rio Grande; but he wished now to say, that, when that country comes to be known, it will be found to be as valuable as any part of Texas. The valley of the Rio Grande is valuable from its source to its mouth. But he did not look upon that as indemnity; he claimed that as the right of Texas. So far as the Mexican population is concerned, there is a good deal of it in Texas; and it comprises many respectable persons, wealthy, intelligent, and distinguished. A good many are now moving in from New Mexico, and settling in Texas.

I take what I say from Major Gaines. But I am glad to hear that any part of New Mexico is fit for the foot of civilized man. And I am glad, moreover, that there are some persons in New Mexico who are not so blindly attached to their miserable condition as not to make an effort to come out of their country, and get into a better.

Sir, I would, if I had time, call the attention of the Senate to an instructive speech made in the other House by Mr. Smith of Connecticut. He seems to have examined all the authorities, to have conversed with all the travellers, to have corresponded with all our agents. His speech contains communications from all of them; and I commend it to every man in the United States who wishes to know what we are about to acquire by the annexation of New Mexico.

New Mexico is secluded, isolated, a place by itself, in the midst and at the foot of vast mountains, five hundred miles from the settled part of Texas, and as far from anywhere else! It does not belong anywhere! It has no belongings about it! At this moment it is absolutely more retired and shut out from communication with the civilized

world than Hawaii or any of the other islands of the Pacific Sea. In seclusion and remoteness, New Mexico may press hard on the character and condition of Typee. And its people are infinitely less elevated, in morals and condition, than the people of the Sandwich Islands. We had much better have Senators from Oahu. They are far less intelligent than the better class of our Indian neighbors. Commend me to the Cherokees, to the Choctaws; if you please, speak of the Pawnees, of the Snakes, the Flatfeet, of anything but the Digging Indians, and I will be satisfied not to take the people of New Mexico. Have they any notion of our institutions, or of any free institutions? Have they any notion of popular government? Not the slightest! Not the slightest on earth! When the question is asked, What will be their Constitution? it is farcical to talk of such people making a Constitution for themselves. They do not know the meaning of the term, they do not know its import. They know nothing at all about it; and I can tell you, sir, that when they are made a Territory, and are to be made a State, such a Constitution as the executive power of this government may think fit to send them will be sent, and will be adopted. The Constitution of our fellow citizens of New Mexico will be framed in the city of Washington.

Now what says in regard to all Mexico Colonel Hardin, that most lamented and distinguished officer, honorably known as a member of the other House, and who has fallen gallantly fighting in the service of his country? Here is his description:

"The whole country is miserably watered. Large districts have no water at all. The streams are small, and at great distances apart. One day we marched on the road

from Monclova to Parras thirty-five miles without water, a pretty severe day's marching for infantry.

"Grass is very scarce, and indeed there is none at all in many regions for miles square. Its place is supplied with prickly-pear and thorny bushes. There is not one acre in two hundred, more probably not one in five hundred, of all the land we have seen in Mexico, which can ever be cultivated; the greater portion of it is the most desolate region I could ever have imagined. The pure granite hills of New England are a paradise to it, for they are without the thorny briers and venomous reptiles which infest the barbed barrenness of Mexico. The good land and cultivated spots in Mexico are but dots on the map. Were it not that it takes so very little to support a Mexican, and that the land which is cultivated yields its produce with little labor, it would be surprising how its sparse population is sustained. All the towns we have visited, with perhaps the exception of Parras, are depopulating, as is also the whole country.

"The people are on a par with their land. One in two hundred or five hundred is rich, and lives like a nabob; the rest are peons, or servants sold for debt, who work for their masters, and are as subservient as the slaves of the South, and look like Indians, and, indeed, are not more capable of self-government. One man, Jacobus Sanchez, owns three-fourths of all the land our column has passed over in Mexico. We are told we have seen the best part of Northern Mexico; if so, the whole of it is not worth much.

"I came to Mexico in favor of getting or taking enough of it to pay the expenses of the war. I now doubt whether all Northern Mexico is worth the expenses of our column of three thousand men. The expenses of the war must be enormous; we have paid enormous prices for everything, much beyond the usual prices of the country."

There it is. That's all North Mexico; and New Mexico is not the better part of it.

Sir, there is a recent traveller, not unfriendly to the

United States, if we may judge from his work, for he speaks well of us everywhere; an Englishman, named Ruxton. He gives an account of the morals and the manners of the population of New Mexico. And, Mr. President and Senators, I shall take leave to introduce you to these soon to be your respected fellow citizens of New Mexico.

"It is remarkable that, although existing from the earliest times of the colonization of New Mexico, a period of two centuries, in a state of continual hostility with the numerous savage tribes of Indians who surround their territory, and in constant insecurity of life and property from their attacks, being also far removed from the enervating influences of large cities, and, in their isolated situation, entirely dependent upon their own resources, the inhabitants are totally destitute of those qualities which, for the above reasons, we might naturally have expected to distinguish them, and are as deficient in energy of character and physical courage as they are in all the moral and intellectual qualities. In their social state but one degree removed from the veriest savages, they might take a lesson even from these in morality and the conventional decencies of life. Imposing no restraint on their passions, a shameless and universal concubinage exists, and a total disregard of morality, to which it would be impossible to find a parallel in any country calling itself civilized. A want of honorable principle, and consummate duplicity and treachery, characterize all their dealings. Liars by nature, they are treacherous and faithless to their friends, cowardly and cringing to their enemies; cruel, as all cowards are, they unite savage ferocity with their want of animal courage; as an example of which, their recent massacre of Governor Bent, and other Americans, may be given, one of a hundred instances."

These, sir, are soon to be our beloved countrymen!

Mr. President, for a good many years I have struggled

in opposition to everything which I thought tended to strengthen the arm of executive power. I think it is growing more and more formidable every day. And I think that by yielding to it in this, as in other instances, we give it a strength which it will be difficult hereafter to resist. I think that it is nothing less than the fear of executive power which induces us to acquiesce in the acquisition of territory; fear, fear, and nothing else.

In the little part which I have acted in public life, it has been my purpose to maintain the people of the United States, what the Constitution designed to make them, one people, one in interest, one in character, and one in political feeling. If we depart from that, we break it all up. What sympathy can there be between the people of Mexico and California and the inhabitants of the Valley of the Mississippi and the Eastern States in the choice of a President? Do they know the same man? Do they concur in any general constitutional principles? Not at all.

Arbitrary governments may have territories and distant possessions, because arbitrary government may rule them by different laws and different systems. Russia may rule in the Ukraine and the provinces of the Caucasus and Kamtschatka by different codes, ordinances, or ukases. We can do no such thing. They must be of us, part of us, or else strangers.

I think I see that in progress which will disfigure and deform the Constitution. While these territories remain territories, they will be a trouble and an annoyance; they will draw after them vast expenses; they will probably require as many troops as we have maintained during the last twenty years to defend them against the Indian tribes. We must maintain an army at that immense distance.

When they shall become States, they will be still more likely to give us trouble.

I think I see a course adopted which is likely to turn the Constitution of the land into a deformed monster, into a curse rather than a blessing; in fact, a frame of an unequal government, not founded on popular representation, not founded on equality, but on the grossest inequality; and I think that this process will go on, or that there is danger that it will go on, until this Union shall fall to pieces. I resist it, to-day and always! Whoever falters or whoever flies, I continue the contest!

I know, sir, that all the portents are discouraging. Would to God I could auspicate good influences! Would to God that those who think with me, and myself, could hope for stronger support! Would that we could stand where we desire to stand! I see the signs are sinister. But with few, or alone, my position is fixed. If there were time, I would gladly awaken the country. I believe the country might be awakened, although it may be too late. For myself, supported or unsupported, by the blessing of God, I shall do my duty. I see well enough all the adverse indications. But I am sustained by a deep and a conscientious sense of duty; and while supported by that feeling, and while such great interests are at stake, I defy auguries, and ask no omen but my country's cause!

THE DARTMOUTH COLLEGE CASE

ARGUMENT BEFORE THE SUPREME COURT AT WASHINGTON, MARCH 10, 1818

THE general question is, whether the acts of the Legislature of New Hampshire of the 27th of June, and of the 18th and 26th of December, 1816, are valid and binding on the plaintiffs, without their acceptance or assent.

The charter of 1769 created and established a corporation, to consist of twelve persons, and no more; to be called the "Trustees of Dartmouth College." The preamble to the charter recites, that it is granted on the application and request of the Rev. Eleazer Wheelock: That Dr. Wheelock, about the year 1754, established a charity school, at his own expense, and on his own estate and plantation: That for several years, through the assistance of well-disposed persons in America, granted at his solicitation, he had clothed, maintained, and educated a number of native Indians, and employed them afterward as missionaries and schoolmasters among the savage tribes: That, his design promising to be useful, he had constituted the Rev. Mr. Whitaker to be his attorney, with power to solicit contributions, in England, for the further extension and carrying on of his undertaking; and that he had requested the Earl of Dartmouth, Baron Smith, Mr. Thornton, and other gentlemen, to receive such sums as might be contributed, in England, toward supporting his school, and to be trustees thereof, for his charity; which these persons had agreed to do: That thereupon Dr. Wheelock had executed to them a deed of

trust, in pursuance of such agreement between him and them, and, for divers good reasons, had referred it to these persons to determine the place in which the school should be finally established: And, to enable them to form a proper decision on this subject, had laid before them the several offers which had been made to him by the several governments in America, in order to induce him to settle and establish his school within the limits of such governments for their own emolument, and the increase of learning in their respective places, as well as for the furtherance of his general original design. And inasmuch as a number of the proprietors of lands in New Hampshire, animated by the example of the Governor himself and others, and in consideration that, without any impediment to its original design, the school might be enlarged and improved, to promote learning among the English, and to supply ministers to the people of that Province, had promised large tracts of land provided the school should be established in that Province, the persons before mentioned, having weighed the reasons in favor of the several places proposed, had given the preference to this Province, and these offers: That Dr. Wheelock therefore represented the necessity of a legal incorporation, and proposed that certain gentlemen in America, whom he had already named and appointed in his will to be trustees of his charity after his decease, should compose the corporation. Upon this recital, and in consideration of the laudable original design of Dr. Wheelock, and willing that the best means of education be established in New Hampshire, for the benefit of the Province, the king granted the charter, by the advice of his Provincial Council.

The substance of the facts thus recited is, that Dr. Wheelock had founded a charity, on funds owned and

procured by himself; that he was at that time the sole dispenser and sole administrator, as well as the legal owner, of these funds; that he had made his will, devising this property in trust, to continue the existence and uses of the school, and appointed trustees; that, in this state of things, he had been invited to fix his school permanently in New Hampshire, and to extend the design of it to the education of the youth of that Province; that before he removed his school, or accepted this invitation, which his friends in England had advised him to accept, he applied for a charter, to be granted, not to whomsoever the king or government of the Province should please, but to such persons as he named and appointed, namely, the persons whom he had already appointed to be the future trustees of his charity by his will.

The charter, or letters-patent, then proceed to create such a corporation, and to appoint twelve persons to constitute it, by the name of the "Trustees of Dartmouth College"; to have perpetual existence as such corporation, and with power to hold and dispose of lands and goods, for the use of the college, with all the ordinary powers of corporations. They are in their discretion to apply the funds and property of the college to the support of the president, tutors, ministers, and other officers of the college, and such missionaries and schoolmasters as they may see fit to employ among the Indians. There are to be twelve trustees forever, and no more; and they are to have the right of filling vacancies occurring in their own body. The Rev. Mr. Wheelock is declared to be the founder of the college, and is, by the charter, appointed first president, with power to appoint a successor by his last will. All proper powers of government, superintendence, and visitation are vested in

the trustees. They are to appoint and remove all officers at their discretion; to fix their salaries, and assign their duties; and to make all ordinances, orders, and laws for the government of the students. To the end that the persons who had acted as depositaries of the contributions in England, and who had also been contributors themselves, might be satisfied of the good use of their contributions, the president was annually, or when required, to transmit to them an account of the progress of the institution and the disbursements of its funds, so long as they should continue to act in that trust. These letters-patent are to be good and effectual, in law, against the king, his heirs and successors forever, without further grant or confirmation; and the trustees are to hold all and singular these privileges, advantages, liberties, and immunities to them and to their successors forever.

No funds are given to the college by this charter. A corporate existence and capacity are given to the trustees, with the privileges and immunities which have been mentioned, to enable the founder and his associates the better to manage the funds which they themselves had contributed, and such others as they might afterward obtain.

After the institution thus created and constituted had existed, uninterruptedly and usefully, nearly fifty years, the Legislature of New Hampshire passed the acts in question.

The first act makes the twelve trustees under the charter, and nine other individuals, to be appointed by the Governor and Council, a corporation, by a new name; and to this new corporation transfers all the property, rights, powers, liberties and privileges of the old corporation; with further power to establish new colleges and an institute, and to apply all or any part of the funds to these purposes, sub-

ject to the power and control of a board of twenty-five overseers, to be appointed by the Governor and Council.

The second act makes further provisions for executing the objects of the first, and the last act authorizes the defendant, the treasurer of the plaintiffs, to retain and hold their property, against their will.

If these acts are valid, the old corporation is abolished, and a new one created. The first act does, in fact, if it can have any effect, create a new corporation, and transfer to it all the property and franchises of the old. The two corporations are not the same in anything which essentially belongs to the existence of a corporation. They have different names, and different powers, rights, and duties. Their organization is wholly different. The powers of the corporation are not vested in the same or similar hands. In one, the trustees are twelve, and no more. In the other, they are twenty-one. In one, the power is in a single board. In the other, it is divided between two boards. Although the act professes to include the old trustees in the new corporation, yet that was without their assent, and against their remonstrance; and no person can be compelled to be a member of such a corporation against his will. It was neither expected nor intended that they should be members of the new corporation. The act itself treats the old corporation as at an end, and, going on the ground that all its functions have ceased, it provides for the first meeting and organization of the new corporation. It expressly provides, also, that the new corporation shall have and hold all the property of the old; a provision which would be quite unnecessary upon any other ground, than that the old corporation was dissolved. But if it could be contended that the effect of these acts was not entirely to

abolish the old corporation, yet it is manifest that they impair and invade the rights, property, and powers of the trustees under the charter, as a corporation, and the legal rights, privileges, and immunities which belong to them as individual members of the corporation.

The twelve trustees were the sole legal owners of all the property acquired under the charter. By the acts, others are admitted, against their will, to be joint owners. The twelve individuals who are trustees were possessed of all the franchises and immunities conferred by the charter. By the acts, nine other trustees and twenty-five overseers are admitted, against their will, to divide these franchises and immunities with them.

If, either as a corporation or as individuals, they have any legal rights, this forcible intrusion of others violates those rights, as manifestly as an entire and complete ouster and dispossession. These acts alter the whole constitution of the corporation. They affect the rights of the whole body as a corporation, and the rights of the individuals who compose it. They revoke corporate powers and franchises. They alienate and transfer the property of the college to others. By the charter, the trustees had a right to fill vacancies in their own number. This is now taken away. They were to consist of twelve, and, by express provision, of no more. This is altered. They and their successors, appointed by themselves, were forever to hold the property. The Legislature has found successors for them, before their seats are vacant. The powers and privileges which the twelve were to exercise exclusively, are now to be exercised by others. By one of the acts, they are subjected to heavy penalties if they exercise their offices, or any of those powers and privileges granted them

by charter, and which they had exercised for fifty years. They are to be punished for not accepting the new grant and taking its benefits. This it must be confessed is rather a summary mode of settling a question of constitutional right. Not only are new trustees forced into the corporation, but new trusts and uses are created. The college is turned into a university. Power is given to create new colleges, and to authorize any diversion of the funds which may be agreeable to the new boards, sufficient latitude is given by the undefined power of establishing an institute. To these new colleges, and this institute, the funds contributed by the founder, Dr. Wheelock, and by the original donors, the Earl of Dartmouth and others, are to be applied, in plain and manifest disregard of the uses to which they were given.

The president, one of the old trustees, had a right to his office, salary, and emoluments, subject to the twelve trustees alone. His title to these is now changed, and he is made accountable to new masters. So also all the professors and tutors. If the Legislature can at pleasure make these alterations and changes in the rights and privileges of the plaintiffs, it may, with equal propriety, abolish these rights and privileges altogether. The same power which can do any part of this work can accomplish the whole. And, indeed, the argument on which these acts have been hitherto defended goes altogether on the ground, that this is such a corporation as the Legislature may abolish at pleasure; and that its members have no rights, liberties, franchises, property, or privileges, which the Legislature may not revoke, annul, alienate, or transfer to others, whenever it sees fit.

It will be contended by the plaintiffs, that these acts are not valid and binding on them without their assent—

1. Because they are against common right, and the Constitution of New Hampshire.

2. Because they are repugnant to the Constitution of the United States.

I am aware of the limits which bound the jurisdiction of the court in this case, and that on this record nothing can be decided but the single question, whether these acts are repugnant to the Constitution of the United States. Yet it may assist in forming an opinion of their true nature and character to compare them with those fundamental principles introduced into the State governments for the purpose of limiting the exercise of the legislative power, and which the Constitution of New Hampshire expresses with great fulness and accuracy.

It is not too much to assert, that the Legislature of New Hampshire would not have been competent to pass the acts in question, and to make them binding on the plaintiffs without their assent, even if there had been, in the Constitution of New Hampshire, or of the United States, no special restriction on their power, because these acts are not the exercise of a power properly legislative. Their effect and object are to take away, from one, rights, property, and franchises, and to grant them to another. This is not the exercise of a legislative power. To justify the taking away of vested rights there must be a forfeiture, to adjudge upon and declare which is the proper province of the judiciary. Attainder and confiscation are acts of sovereign power, not acts of legislation. The British Parliament, among other unlimited powers, claims that of altering and vacating charters; not as an act of ordinary legislation, but of uncontrolled authority. It is theoretically omnipotent. Yet, in modern times, it has very

rarely attempted the exercise of this power. In a celebrated instance, those who asserted this power in Parliament vindicated its exercise only in a case in which it could be shown, first, That the charter in question was a charter of political power; second, That there was a great and overruling State necessity, justifying the violation of the charter; third, That the charter had been abused and justly forfeited. The bill affecting this charter did not pass. Its history is well known. The act which afterward did pass, passed with the assent of the corporation. Even in the worst times, this power of Parliament to repeal and rescind charters has not often been exercised. The illegal proceedings in the reign of Charles the Second were under color of law. Judgments of forfeiture were obtained in the courts. Such was the case of the *quo warranto* against the city of London, and the proceedings by which the charter of Massachusetts was vacated.

The Legislature of New Hampshire has no more power over the rights of the plaintiffs than existed somewhere, in some department of government, before the Revolution. The British Parliament could not have annulled or revoked this grant as an act of ordinary legislation. If it had done it at all, it could only have been in virtue of that sovereign power, called omnipotent, which does not belong to any Legislature in the United States. The Legislature of New Hampshire has the same power over this charter which belonged to the king who granted it, and no more. By the law of England, the power to create corporations is a part of the royal prerogative. By the Revolution, this power may be considered as having devolved on the Legislature of the State, and it has accordingly been exercised by the Legislature. But the king cannot abolish a corporation,

or new-model it, or alter its powers, without its assent. This is the acknowledged and well-known doctrine of the common law. "Whatever might have been the notion in former times," says Lord Mansfield, "it is most certain now that the corporations of the universities are lay corporations; and that the crown cannot take away from them any rights that have been formerly subsisting in them under old charters or prescriptive usage." After forfeiture duly found, the king may regrant the franchises; but a grant of franchises already granted, and of which no forfeiture has been found, is void.

Corporate franchises can only be forfeited by trial and judgment. In case of a new charter or grant to an existing corporation, it may accept or reject it as it pleases. It may accept such part of the grant as it chooses, and reject the rest. In the very nature of things, a charter cannot be forced upon anybody. No one can be compelled to accept a grant; and without acceptance the grant is necessarily void. It cannot be pretended that the Legislature, as successor to the king in this part of his prerogative, has any power to revoke, vacate, or alter this charter. If, therefore, the Legislature has not this power by any specific grant contained in the Constitution; nor as included in its ordinary legislative powers; nor by reason of its succession to the prerogatives of the crown in this particular, on what ground would the authority to pass these acts rest, even if there were no prohibitory clauses in the Constitution and the Bill of Rights?

But there are prohibitions in the Constitution and Bill of Rights of New Hampshire, introduced for the purpose of limiting the legislative power and protecting the rights and property of the citizens. One prohibition is, "that

no person shall be deprived of his property, immunities, or privileges, put out of the protection of the law, or deprived of his life, liberty, or estate, but by judgment of his peers or the law of the land."

In the opinion, however, which was given in the court below, it is denied that the trustees under the charter had any property, immunity, liberty, or privilege in this corporation, within the meaning of this prohibition in the Bill of Rights. It is said that it is a public corporation and public property; that the trustees have no greater interest in it than any other individuals; that it is not private property, which they can sell or transmit to their heirs, and that therefore they have no interest in it; that their office is a public trust, like that of the Governor or a judge, and that they have no more concern in the property of the college than the Governor in the property of the State, or than the judges in the fines which they impose on the culprits at their bar; that it is nothing to them whether their powers shall be extended or lessened, any more than it is to their honors whether their jurisdiction shall be enlarged or diminished. It is necessary, therefore, to inquire into the true nature and character of the corporation which was created by the charter of 1769.

There are divers sorts of corporations; and it may be safely admitted that the Legislature has more power over some than others. Some corporations are for government and political arrangement; such, for example, as cities, counties, and towns in New England. These may be changed and modified as public convenience may require, due regard being always had to the rights of property. Of such corporations, all who live within the limits are of course obliged to be members, and to

submit to the duties which the law imposes on them as such. Other civil corporations are for the advancement of trade and business, such as banks, insurance companies, and the like. These are created, not by general law, but usually by grant. Their constitution is special. It is such as the Legislature sees fit to give, and the grantees to accept.

The corporation in question is not a civil, although it is a lay corporation. It is an eleemosynary corporation. It is a private charity, originally founded and endowed by an individual, with a charter obtained for it at his request, for the better administration of his charity. "The eleemosynary sort of corporations are such as are constituted for the perpetual distributions of the free alms or bounty of the founder of them, to such persons as he has directed. Of this are all hospitals for the maintenance of the poor, sick, and impotent; and all colleges both in our universities and out of them." Eleemosynary corporations are for the management of private property, according to the will of the donors. They are private corporations. A college is as much a private corporation as a hospital; especially a college founded, as this was, by private bounty. A college is a charity. "The establishment of learning," says Lord Hardwicke, "is a charity, and so considered in the statute of Elizabeth. A devise to a college, for their benefit, is a laudable charity, and deserves encouragement."

The legal signification of a charity is derived chiefly from the statute 43 Eliz. ch. 4. "Those purposes," says Sir William Grant, "are considered charitable which that statute enumerates." Colleges are enumerated as charities in that statute. The government, in these cases, lends its aid to perpetuate the beneficent intention of the donor, by

granting a charter under which his private charity shall continue to be dispensed after his death. This is done either by incorporating the objects of the charity, as, for instance, the scholars in a college or the poor in a hospital, or by incorporating those who are to be governors or trustees of the charity. In cases of the first sort, the founder is, by the common law, visitor. In early times it became a maxim, that he who gave the property might regulate it in future. "Cujus est dare, ejus est disponere." This right of visitation descended from the founder to his heir as a right of property, and precisely as his other property went to his heir; and in default of heirs it went to the king, as all other property goes to the king for the want of heirs. The right of visitation arises from the property. It grows out of the endowment. The founder may, if he please, part with it at the time when he establishes the charity, and may vest it in others. Therefore, if he chooses that governors, trustees, or overseers should be appointed in the charter, he may cause it to be done, and his power of visitation may be transferred to them, instead of descending to his heirs. The persons thus assigned or appointed by the founder will be visitors, with all the powers of the founder, in exclusion of his heir. The right of visitation, then, accrues to them, as a matter of property, by the gift, transfer, or appointment of the founder. This is a private right, which they can assert in all legal modes, and in which they have the same protection of the law as in all other rights. As visitors they may make rules, ordinances, and statutes, and alter and repeal them, as far as permitted so to do by the charter. Although the charter proceeds from the crown or the government, it is considered as the will of the donor. It is obtained at his request. He im-

poses it as the rule which is to prevail in the dispensation of his bounty in all future times. The king or government which grants the charter is not thereby the founder, but he who furnishes the funds. The gift of the revenues is the foundation.

The leading case on this subject is Phillips *v.* Bury. This was an ejectment brought to recover the rectory house, etc., of Exeter College in Oxford. The question was whether the plaintiff or defendant was legal rector. Exeter College was founded by an individual, and incorporated by a charter granted by Queen Elizabeth. The controversy turned upon the power of the visitor, and, in the discussion of the cause, the nature of college charters and corporations was very fully considered. Lord Holt's judgment, copied from his own manuscript, is found in 2 Term Reports, 346. The following is an extract:

"That we may the better apprehend the nature of a visitor, we are to consider that there are in law two sorts of corporations aggregate; such as are for public government, and such as are for private charity. Those that are for the public government of a town, city, mystery, or the like, being for public advantage, are to be governed according to the laws of the land. If they make any particular private laws and constitutions, the validity and justice of them is examinable in the king's courts. Of these there are no particular private founders, and consequently no particular visitor; there are no patrons of these; therefore, if no provision be in the charter how the succession shall continue, the law supplieth the defect of that constitution, and saith it shall be by election; as mayor, alderman, common council, and the like. But private and particular corporations for charity, founded and endowed by private persons, are subject to the private government of those who erect them; and, therefore, if there be no visitor appointed by the found-

er, the law appoints the founder and his heirs to be visitors, who are to act and proceed according to the particular laws and constitutions assigned them by the founder. It is now admitted on all hands that the founder is patron, and, as founder, is visitor, if no particular visitor be assigned; so that patronage and visitation are necessary consequents one upon another. For this visitatorial power was not introduced by any canons or constitutions ecclesiastical (as was said by a learned gentleman whom I have in my eye, in his argument of this case); it is an appointment of law. It ariseth from the property which the founder had in the lands assigned to support the charity; and as he is the author of the charity, the law gives him and his heirs a visitatorial power, that is, an authority to inspect the actions and regulate the behavior of the members that partake of the charity. For it is fit the members that are endowed, and that have the charity bestowed upon them, should not be left to themselves, but pursue the intent and design of him that bestowed it upon them. Now, indeed, where the poor, or those that receive the charity, are not incorporated, but there are certain trustees who dispose of the charity, there is no visitor, because the interest of the revenue is not vested in the poor that have the benefit of the charity, but they are subject to the orders and directions of the trustees. But where they who are to enjoy the benefit of the charity are incorporated, there to prevent all perverting of the charity, or to compose differences that may happen among them, there is by law a visitatorial power; and it being a creature of the founder's own, it is reason that he and his heirs should have that power, unless by the founder it is vested in some other. Now there is no manner of difference between a college and a hospital, except only in degree. A hospital is for those that are poor, and mean, and low, and sickly; a college is for another sort of indigent persons; but it hath another intent, to study in and breed up persons in the world that have no otherwise to live; but still it is as much within the reasons as hospitals.

And if in a hospital the master and poor are incorporated, it is a college having a common seal, to act by, although it hath not the name of a college (which always supposeth a corporation), because it is of an inferior degree; and in the one case and in the other there must be a visitor, either the founder and his heirs or one appointed by him; and both are eleemosynary."

Lord Holt concludes his whole argument by again repeating, that that college was a private corporation, and that the founder had a right to appoint a visitor, and to give him such power as he saw fit.

The learned Bishop Stillingfleet's argument in the same cause, as a member of the House of Lords, when it was there heard, exhibits very clearly the nature of colleges and similar corporations. It is to the following effect: "That this absolute and conclusive power of visitors is no more than the law hath appointed in other cases, upon commissions of charitable uses: that the common law, and not any ecclesiastical canons, do place the power of visitation in the founder and his heirs, unless he settle it upon others: that although corporations for public government be subject to the courts of Westminster Hall, which have no particular or special visitors, yet corporations for charity, founded and endowed by private persons, are subject to the rule and government of those that erect them; but where the persons to whom the charity is given are not incorporated, there is no such visitatorial power, because the interest of the revenue is not invested in them; but where they are, the right of visitation ariseth from the foundation, and the founder may convey it to whom and in what manner he pleases; and the visitor acts as founder, and by the same authority which he had, and consequently is no more ac-

countable than he had been: that the king by his charter can make a society to be incorporated so as to have the rights belonging to persons, as to legal capacities: that colleges, although founded by private persons, are yet incorporated by the king's charter; but although the kings by their charter made the colleges to be such in law, that is, to be legal corporations, yet they left to the particular founders authority to appoint what statutes they thought fit for the regulation of them. And not only the statutes, but the appointment of visitors, was left to them, and the manner of government, and the several conditions on which any persons were to be made or continue partakers of their bounty."

These opinions received the sanction of the House of Lords, and they seem to be settled and undoubted law. Where there is a charter, vesting proper powers in trustees, or governors, they are visitors; and there is no control in anybody else; except only that the courts of equity or of law will interfere so far as to preserve the revenues and prevent the perversion of the funds, and to keep the visitors within their prescribed bounds. "If there be a charter with proper powers, the charity must be regulated in the manner prescribed by the charter. There is no ground for the controlling interposition of the Courts of Chancery. The interposition of the courts, therefore, in those instances in which the charities were founded on charters or by act of Parliament, and a visitor or governor and trustees appointed, must be referred to the general jurisdiction of the courts in all cases in which a trust conferred appears to have been abused, and not to an original right to direct the management of the charity, or the conduct of the governors or trustees." "The original of all visitatorial power is the

property of the donor, and the power every one has to dispose, direct, and regulate his own property; like the case of patronage, *cujus est dare*, etc. Therefore, if either the crown or the subject creates an eleemosynary foundation, and vests the charity in the persons who are to receive the benefit of it, since a contest might arise about the government of it, the law allows the founder or his heirs, or the person specially appointed by him to be visitor, to determine concerning his own creature. If the charity is not vested in the persons who are to partake, but in trustees for their benefit, no visitor can arise by implication, but the trustees have that power."

"There is nothing better established," says Lord Commissioner Eyre, "than that this court does not entertain a general jurisdiction, or regulate and control charities established by charter. There the establishment is fixed and determined; and the court has no power to vary it. If the governors established for the regulation of it are not those who have the management of the revenue, this court has no jurisdiction, and if it is ever so much abused, as far as it respects the jurisdiction of this court it is without remedy; but if those established as governors have also the management of the revenues, this court does assume a jurisdiction of necessity, so far as they are to be considered as trustees of the revenue."

"The foundations of colleges," says Lord Mansfield, "are to be considered in two views; namely, as they are corporations and as they are eleemosynary. As eleemosynary, they are the creatures of the founder; he may delegate his power, either generally or specially; he may prescribe particular modes and manners, as to the exercise of part of it. If he makes a general visitor (as by the general

words *visitator sit*), the person so constituted has all incidental power; but he may be restrained as to particular instances. The founder may appoint a special visitor for a particular purpose, and no further. The founder may make a general visitor; and yet appoint an inferior particular power, to be executed without going to the visitor in the first instance." And even if the king be founder, if he grant a charter, incorporating trustees and governors, they are visitors, and the king cannot visit. A subsequent donation, or ingrafted fellowship, falls under the same general visitatorial power, if not otherwise specially provided.

In New England, and perhaps throughout the United States, eleemosynary corporations have been generally established in the latter mode: that is, by incorporating governors, or trustees, and vesting in them the right of visitation. Small variations may have been in some instances adopted; as in the case of Harvard College, where some power of inspection is given to the overseers, but not, strictly speaking, a visitatorial power, which still belongs, it is apprehended, to the fellows or members of the corporation. In general, there are many donors. A charter is obtained, comprising them all, or some of them, and such others as they choose to include, with the right of appointing successors. They are thus the visitors of their own charity, and appoint others, such as they may see fit, to exercise the same office in time to come. All such corporations are private. The case before the court is clearly that of an eleemosynary corporation. It is, in the strictest legal sense, a private charity. In King *v.* St. Catherine's Hall, that college is called a private eleemosynary lay corporation. It was endowed by a private founder, and incorporated by letters-patent. And in the same manner was

Dartmouth College founded and incorporated. Dr. Wheelock is declared by the charter to be its founder. It was established by him, on funds contributed and collected by himself.

As such founder, he had a right of visitation, which he assigned to the trustees, and they received it by his consent and appointment, and held it under the charter. He appointed these trustees visitors, and in that respect to take place of his heir; as he might have appointed devisees, to take his estate instead of his heir. Little, probably, did he think, at that time, that the Legislature would ever take away this property and these privileges, and give them to others. Little did he suppose that this charter secured to him and his successors no legal rights. Little did the other donors think so. If they had, the college would have been, what the university is now, a thing upon paper, existing only in name.

The numerous academies in New England have been established substantially in the same manner. They hold their property by the same tenure, and no other. Nor has Harvard College any surer title than Dartmouth College. It may to-day have more friends; but to-morrow it may have more enemies. Its legal rights are the same. So also of Yale College; and, indeed, of all the others. When the Legislature gives to these institutions, it may and does accompany its grants with such conditions as it pleases. The grant of lands by the Legislature of New Hampshire to Dartmouth College, in 1789, was accompanied with various conditions. When donations are made, by the Legislature or others, to a charity already existing, without any condition, or the specification of any new use, the donation follows the nature of the charity. Hence the doctrine, that

all eleemosynary corporations are private bodies. They are founded by private persons, and on private property. The public cannot be charitable in these institutions. It is not the money of the public, but of private persons, which is dispensed. It may be public, that is general, in its uses and advantages; and the State may very laudably add contributions of its own to the funds; but it is still private in the tenure of the property, and in the right of administering the funds.

If the doctrine laid down by Lord Holt, and the House of Lords, in Phillips *v.* Bury, and recognized and established in all the other cases, be correct, the property of this college was private property; it was vested in the trustees by the charter, and to be administered by them, according to the will of the founder and donors, as expressed in the charter. They were also visitors of the charity, in the most ample sense. They had, therefore, as they contend, privileges, property, and immunities, within the true meaning of the Bill of Rights. They had rights, and still have them, which they can assert against the Legislature, as well as against other wrong-doers. It makes no difference, that the estate is holden for certain trusts. The legal estate is still theirs. They have a right in the property, and they have a right of visiting and superintending the trust; and this is an object of legal protection, as much as any other right. The charter declares that the powers conferred on the trustees are "privileges, advantages, liberties, and immunities"; and that they shall be forever holden by them and their successors. The New Hampshire Bill of Rights declares that no one shall be deprived of his "property, privileges, or immunities," but by judgment of his peers, or the law of the land. The argument on the other side is, that, although

these terms may mean something in the Bill of Rights, they mean nothing in this charter. But they are terms of legal signification, and very properly used in the charter. They are equivalent with franchises. Blackstone says that franchises and liberty are used as synonymous terms. And after enumerating other liberties and franchises, he says, "It is likewise a franchise for a number of persons to be incorporated and subsist as a body politic, with a power to maintain perpetual succession and do other corporate acts; and each individual member of such a corporation is also said to have a franchise or freedom."

Liberties is the term used in Magna Charta as including franchises, privileges, immunities, and all the rights which belong to that class. Professor Sullivan says, the term signifies the "privileges that some of the subjects, whether single persons or bodies corporate, have above others by the lawful grant of the king; as the chattels of felons or outlaws, and the lands and privileges of corporations."

The privilege, then, of being a member of a corporation, under a lawful grant, and of exercising the rights and powers of such member, is such a privilege, liberty, or franchise, as has been the object of legal protection, and the subject of a legal interest, from the time of Magna Charta to the present moment. The plaintiffs have such an interest in this corporation, individually, as they could assert and maintain in a court of law, not as agents of the public, but in their own right. Each trustee has a franchise, and if he be disturbed in the enjoyment of it, he would have redress, on appealing to the law, as promptly as for any other injury. If the other trustees should conspire against any one of them to prevent his equal right and voice in the appointment of a president or professor, or in the passing of any

statute or ordinance of the college, he would be entitled to his action, for depriving him of his franchise. It makes no difference, that this property is to be holden and administered, and these franchises exercised, for the purpose of diffusing learning. No principle and no case establishes any such distinction. The public may be benefited by the use of this property. But this does not change the nature of the property, or the rights of the owners. The object of the charter may be public good; so it is in all other corporations; and this would as well justify the resumption or violation of the grant in any other case as in this. In the case of an advowson, the use is public, and the right cannot be turned to any private benefit or emolument. It is nevertheless a legal private right, and the property of the owner, as emphatically as his freehold. The rights and privileges of trustees, visitors, or governors of incorporated colleges, stand on the same foundation. They are so considered, both by Lord Holt and Lord Hardwicke.

To contend that the rights of the plaintiffs may be taken away, because they derive from them no pecuniary benefit or private emolument, or because they cannot be transmitted to their heirs, or would not be assets to pay their debts, is taking an extremely narrow view of the subject. According to this notion, the case would be different, if, in the charter, they had stipulated for a commission on the disbursement of the funds; and they have ceased to have any interest in the property, because they have undertaken to administer it gratuitously.

It cannot be necessary to say much in refutation of the idea, that there cannot be a legal interest, or ownership, in anything which does not yield a pecuniary profit; as if the law regarded no rights but the rights of money, and of vis-

ible, tangible property. Of what nature are all rights of suffrage? No elector has a particular personal interest; but each has a legal right, to be exercised at his own discretion, and it cannot be taken away from him. The exercise of this right directly and very materially affects the public; much more so than the exercise of the privileges of a trustee of this college. Consequences of the utmost magnitude may sometimes depend on the exercise of the right of suffrage by one or a few electors. Nobody was ever yet heard to contend, however, that on that account the public might take away the right, or impair it. This notion appears to be borrowed from no better source than the repudiated doctrine of the three judges in the Aylesbury case. That was an action against a returning officer for refusing the plaintiff's vote, in the election of a member of Parliament. Three of the judges of the King's Bench held, that the action could not be maintained, because, among other objections, "it was not any matter of profit, either *in presenti*, or *in futuro*." It would not enrich the plaintiff *in presenti*, nor would it *in futuro* go to his heirs, or answer to pay his debts. But Lord Holt and the House of Lords were of another opinion. The judgment of the three judges was reversed, and the doctrine they held, having been exploded for a century, seems now for the first time to be revived.

Individuals have a right to use their own property for purposes of benevolence, either toward the public or toward other individuals. They have a right to exercise this benevolence in such lawful manner as they may choose; and when the government has induced and excited it, by contracting to give perpetuity to the stipulated manner of exercising it, it is not law, but violence, to rescind this contract,

and seize on the property. Whether the State will grant these franchises, and under what conditions it will grant them, it decides for itself. But when once granted, the Constitution holds them to be sacred, till forfeited for just cause.

That all property, of which the use may be beneficial to the public, belongs therefore to the public, is quite a new doctrine. It has no precedent, and is supported by no known principle. Dr. Wheelock might have answered his purposes, in this case, by executing a private deed of trust. He might have conveyed his property to trustees, for precisely such uses as are described in this charter. Indeed, it appears that he had contemplated the establishing of his school in that manner, and had made his will, and devised the property to the same persons who were afterward appointed trustees in the charter. Many literary and other charitable institutions are founded in that manner, and the trust is renewed, and conferred on other persons, from time to time, as occasion may require. In such a case, no lawyer would or could say, that the Legislature might divest the trustees, constituted by deed or will, seize upon the property, and give it to other persons, for other purposes. And does the granting of a charter, which is only done to perpetuate the trust in a more convenient manner, make any difference? Does or can this change the nature of the charity, and turn it into a public political corporation? Happily, we are not without authority on this point. It has been considered and adjudged. Lord Hardwicke says, in so many words, "The charter of the crown cannot make a charity more or less public, but only more permanent than it would otherwise be."

The granting of the corporation is but making the trust perpetual, and does not alter the nature of the charity.

The very object sought in obtaining such charter, and in giving property to such a corporation, is to make and keep it private property, and to clothe it with all the security and inviolability of private property. The intent is, that there shall be a legal private ownership, and that the legal owners shall maintain and protect the property, for the benefit of those for whose use it was designed. Who ever endowed the public? Who ever appointed a Legislature to administer his charity? Or who ever heard before, that a gift to a college, or a hospital, or an asylum, was, in reality, nothing but a gift to the State?

The State of Vermont is a principal donor to Dartmouth College. The lands given lie in that State. This appears in the special verdict. Is Vermont to be considered as having intended a gift to the State of New Hampshire in this case, as, it has been said, is to be the reasonable construction of all donations to the college? The Legislature of New Hampshire affects to represent the public, and therefore claims a right to control all property destined to public use. What hinders Vermont from considering herself equally the representative of the public, and from resuming her grants, at her own pleasure? Her right to do so is less doubtful than the power of New Hampshire to pass the laws in question.

In University *v.* Foy, the Supreme Court of North Carolina pronounced unconstitutional and void a law repealing a grant to the University of North Carolina, although that university was originally erected and endowed by a statute of the State. That case was a grant of lands, and the court decided that it could not be resumed. This is the grant of a power and capacity to hold lands. Where is the difference of the cases, upon principle?

In Terrett *v.* Taylor, this court decided that a legislative grant or confirmation of lands, for the purposes of moral and religious instruction, could no more be rescinded than other grants. The nature of the use was not holden to make any difference. A grant to a parish or church, for the purposes which have been mentioned, cannot be distinguished, in respect to the title it confers, from a grant to a college for the promotion of piety and learning. To the same purpose may be cited the case of Pawlett *v.* Clark. The State of Vermont, by statute, in 1794, granted to the respective towns in that State certain glebe lands lying within those towns for the sole use and support of religious worship. In 1799, an act was passed to repeal the act of 1794; but this court declared, that the act of 1794, "so far as it granted the glebes to the towns, could not afterward be repealed by the Legislature, so as to divest the rights of the towns under the grant."

It will be for the other side to show that the nature of the use decides the question whether the Legislature has power to resume its grants. It will be for those who maintain such a doctrine to show the principles and cases upon which it rests. It will be for them also to fix the limits and boundaries of their doctrine, and to show what are and what are not such uses as to give the Legislature this power of resumption and revocation. And to furnish an answer to the cases cited, it will be for them further to show that a grant for the use and support of religious worship stands on other ground than a grant for the promotion of piety and learning.

I hope enough has been said to show that the trustees possessed vested liberties, privileges, and immunities, under this charter; and that such liberties, privileges, and immu-

nities, being once lawfully obtained and vested, are as inviolable as any vested rights of property whatever. Rights to do certain acts, such, for instance, as the visitation and superintendence of a college and the appointment of its officers, may surely be vested rights, to all legal intents, as completely as the right to possess property. A late learned judge of this court has said, "When I say that a right is vested in a citizen, I mean that he has the power to do certain actions, or to possess certain things, according to the law of the land."

If such be the true nature of the plaintiffs' interests under this charter, what are the articles in the New Hampshire Bill of Rights which these acts infringe?

They infringe the second article; which says, that the citizens of the State have a right to hold and possess property. The plaintiffs had a legal property in this charter; and they had acquired property under it. The acts deprive them of both. They impair and take away the charter; and they appropriate the property to new uses, against their consent. The plaintiffs cannot now hold the property acquired by themselves, and which this article says they have a right to hold.

They infringe the twentieth article. By that article it is declared that, in questions of property, there is a right to trial. The plaintiffs are divested, without trial or judgment.

They infringe the twenty-third article. It is therein declared that no retrospective laws shall be passed. This article bears directly on the case. These acts must be deemed to be retrospective, within the settled construction of that term. What a retrospective law is, has been decided, on the construction of this very article, in the Circuit Court

for the First Circuit. The learned judge of that circuit says: "Every statute which takes away or impairs vested rights, acquired under existing laws, must be deemed retrospective." That all such laws are retrospective was decided also in the case of Dash *v.* Van Kleek, where a most learned judge quotes this article from the Constitution of New Hampshire, with manifest approbation, as a plain and clear expression of those fundamental and unalterable principles of justice, which must lie at the foundation of every free and just system of laws. Can any man deny that the plaintiffs had rights, under the charter, which were legally vested, and that by these acts those rights are impaired?

"It is a principle in the English law," says Chief-Justice Kent, in the case last cited, "as ancient as the law itself, that a statute, even of its omnipotent Parliament, is not to have a retrospective effect. 'Nova constitutio futuris formam imponere debet, et non præteritis.' The maxim in Bracton was taken from the civil law, for we find in that system the same principle, expressed substantially in the same words, that the lawgiver cannot alter his mind to the prejudice of a vested right. 'Nemo potest mutare concilium suum in alterius injuriam.' This maxim of Papinian is general in its terms, but Dr. Taylor applies it directly as a restriction upon the lawgiver, and a declaration in the Code leaves no doubt as to the sense of the civil law. 'Leges et constitutiones futuris certum est dare formam negotiis, non ad facta præterita revocari, nisi nominatim, et de præterito tempore, et adhuc pendentibus negotiis cautum sit.' This passage, according to the best interpretation of the civilians, relates not merely to future suits, but to future, as contradistinguished from past, contracts and vested rights. It is, indeed, admitted that the

prince may enact a retrospective law, provided it be done expressly; for the will of the prince under the despotism of the Roman emperors was paramount to every obligation. Great latitude was anciently allowed to legislative expositions of statutes; for the separation of the judicial from the legislative power was not then distinctly known or prescribed. The prince was in the habit of interpreting his own laws for particular occasions. This was called the 'Interlocutio Principis'; and this, according to Huber's definition, was, 'quando principes inter partes loquuntur et jus dicunt.' No correct civilian, and especially no proud admirer of the ancient Republic (if any such then existed), could have reflected on this interference with private rights and pending suits without disgust and indignation; and we are rather surprised to find that, under the violent and arbitrary genius of the Roman government, the principle before us should have been acknowledged and obeyed to the extent in which we find it. The fact shows that it must be founded in the clearest justice. Our case is happily very different from that of the subjects of Justinian. With us the power of the lawgiver is limited and defined; the judicial is regarded as a distinct, independent power; private rights are better understood and more exalted in public estimation, as well as secured by provisions dictated by the spirit of freedom, and unknown to the civil law. Our Constitutions do not admit the power assumed by the Roman prince, and the principle we are considering is now to be regarded as sacred."

These acts infringe also the thirty-seventh article of the Constitution of New Hampshire; which says, that the powers of government shall be kept separate. By these acts, the Legislature assumes to exercise a judicial power.

It declares a forfeiture, and resumes franchises, once granted, without trial or hearing.

If the Constitution be not altogether waste-paper, it has restrained the power of the Legislature in these particulars. If it has any meaning, it is that the Legislature shall pass no act directly and manifestly impairing private property and private privileges. It shall not judge by act. It shall not decide by act. It shall not deprive by act. But it shall leave all these things to be tried and adjudged by the law of the land.

The fifteenth article has been referred to before. It declares that no one shall be "deprived of his property, immunities, or privileges, but by the judgment of his peers or the law of the land." Notwithstanding the light in which the learned judges in New Hampshire viewed the rights of the plaintiffs under the charter, and which has been before adverted to, it is found to be admitted in their opinion, that those rights are privileges within the meaning of this fifteenth article of the Bill of Rights. Having quoted that article, they say: "That the right to manage the affairs of this college is a privilege, within the meaning of this clause of the Bill of Rights, is not to be doubted." In my humble opinion, this surrenders the point. To resist the effect of this admission, however, the learned judges add: "But how a privilege can be protected from the operation of the law of the land by a clause in the Constitution, declaring that it shall not be taken away but by the law of the land, is not very easily understood." This answer goes on the ground, that the acts in question are laws of the land, within the meaning of the Constitution. If they be so, the argument drawn from this article is fully answered. If they be not so, it

being admitted that the plaintiffs' rights are "privileges," within the meaning of the article, the argument is not answered, and the article is infringed by the acts.

Are, then, these acts of the Legislature, which affect only particular persons and their particular privileges, laws of the land? Let this question be answered by the text of Blackstone. "And first it (*i.e.*, law) is a rule: not a transient, sudden order from a superior to or concerning a particular person; but something permanent, uniform, and universal. Therefore a particular act of the Legislature to confiscate the goods of Titius, or to attaint him of high treason, does not enter into the idea of a municipal law; for the operation of this act is spent upon Titius only, and has no relation to the community in general; it is rather a sentence than a law." Lord Coke is equally decisive and emphatic. Citing and commenting on the celebrated twenty-ninth chapter of Magna Charta, he says: "No man shall be disseized, etc., unless it be by the lawful judgment, that is, verdict of equals, or by the law of the land, that is (to speak it once for all), by the due course and process of law." Have the plaintiffs lost their franchise by "due course and process of law?" On the contrary, are not these acts "particular acts of the Legislature, which have no relation to the community in general, and which are rather sentences than laws?"

By the law of the land is most clearly intended the general law; a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. The meaning is, that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society. Everything which may pass under the form of an enactment is not, therefore, to be

considered the law of the land. If this were so, acts of attainder, bills of pains and penalties, acts of confiscation, acts reversing judgments, and acts directly transferring one man's estate to another, legislative judgments, decrees, and forfeitures in all possible forms, would be the law of the land.

Such a strange construction would render constitutional provisions of the highest importance completely inoperative and void. It would tend directly to establish the union of all powers in the Legislature. There would be no general, permanent law for courts to administer or men to live under. The administration of justice would be an empty form, an idle ceremony. Judges would sit to execute legislative judgments and decrees; not to declare the law or to administer the justice of the country. "Is that the law of the land," said Mr. Burke, "upon which, if a man go to Westminster Hall, and ask counsel by what title or tenure he holds his privilege or estate according to the law of the land, he should be told, that the law of the land is not yet known; that no decision or decree has been made in his case; that when a decree shall be passed, he will then know what the law of the land is? Will this be said to be the law of the land, by any lawyer who has a rag of a gown left upon his back, or a wig with one tie upon his head?"

That the power of electing and appointing the officers of this college is not only a right of the trustees as a corporation, generally, and in the aggregate, but that each individual trustee has also his own individual franchise in such right of election and appointment, is according to the language of all the authorities. Lord Holt says: "It is agreeable to reason and the rules of law, that a franchise

should be vested in the corporation aggregate, and yet the benefit of it to redound to the particular members, and to be enjoyed by them in their private capacity. Where the privilege of election is used by particular persons, it is a particular right, vested in every particular man."

It is also to be considered, that the president and professors of this college have rights to be affected by these acts. Their interest is similar to that of fellows in the English colleges; because they derive their living, wholly or in part, from the founders' bounty. The president is one of the trustees or corporators. The professors are not necessarily members of the corporation; but they are appointed by the trustees, are removable only by them, and have fixed salaries payable out of the general funds of the college. Both president and professors have freeholds in their offices; subject only to be removed by the trustees, as their legal visitors, for good cause. All the authorities speak of fellowships in colleges as freeholds, notwithstanding the fellows may be liable to be suspended or removed, for misbehavior, by their constituted visitors.

Nothing could have been less expected, in this age, than that there should have been an attempt, by acts of the Legislature, to take away these college livings, the inadequate but the only support of literary men who have devoted their lives to the instruction of youth. The president and professors were appointed by the twelve trustees. They were accountable to nobody else, and could be removed by nobody else. They accepted their offices on this tenure. Yet the Legislature has appointed other persons, with power to remove these officers and to deprive them of their livings; and those other persons have exercised that power. No description of private property has been regarded as

more sacred than college livings. They are the estates and freeholds of a most deserving class of men; of scholars who have consented to forego the advantages of professional and public employments, and to devote themselves to science and literature and the instruction of youth in the quiet retreats of academic life. Whether to dispossess and oust them; to deprive them of their office, and to turn them out of their livings; to do this, not by the power of their legal visitors or governors, but by acts of the Legislature, and to do it without forfeiture and without fault; whether all this be not in the highest degree an indefensible and arbitrary proceeding, is a question of which there would seem to be but one side fit for a lawyer or a scholar to espouse.

Of all the attempts of James the Second to overturn the law, and the rights of his subjects, none was esteemed more arbitrary or tyrannical than his attack on Magdalen College, Oxford; and yet that attempt was nothing but to put out one president and put in another. The president of that college, according to the charter and statutes, is to be chosen by the fellows, who are the corporators. There being a vacancy, the king chose to take the appointment out of the hands of the fellows, the legal electors of a president, into his own hands. He therefore sent down his mandate, commanding the fellows to admit for president a person of his nomination; and, inasmuch as this was directly against the charter and constitution of the college, he was pleased to add a *non obstante* clause of sufficiently comprehensive import. The fellows were commanded to admit the person mentioned in the mandate, "any statute, custom, or constitution to the contrary notwithstanding, wherewith we are graciously pleased to dispense, in this behalf." The fellows refused obedience to

this mandate, and Dr. Hough, a man of independence and character, was chosen president by the fellows, according to the charter and statutes. The king then assumed the power, in virtue of his prerogative, to send down certain commissioners to turn him out; which was done accordingly; and Parker, a creature suited to the times, put in his place. Because the president, who was rightfully and legally elected, would not deliver the keys, the doors were broken open. "The nation as well as the university," says Bishop Burnet, "looked on all these proceedings with just indignation. It was thought an open piece of robbery and burglary when men, authorized by no legal commission, came and forcibly turned men out of their possession and freehold." Mr. Hume, although a man of different temper, and of other sentiments, in some respects, than Dr. Burnet, speaks of this arbitrary attempt of prerogative in terms not less decisive. "The president, and all the fellows," says he, "except two, who complied, were expelled the college, and Parker was put in possession of the office. This act of violence, of all those which were committed during the reign of James, is perhaps the most illegal and arbitrary. When the dispensing power was the most strenuously insisted on by court lawyers, it had still been allowed that the statutes which regard private property could not legally be infringed by that prerogative. Yet, in this instance, it appeared that even these were not now secure from invasion. The privileges of a college are attacked; men are illegally dispossessed of their property for adhering to their duty, to their oaths, and to their religion."

This measure King James lived to repent, after repentance was too late. When the charter of London was restored, and other measures of violence were retracted, to

avert the impending revolution, the expelled president and fellows of Magdalen College were permitted to resume their rights. It is evident that this was regarded as an arbitrary interference with private property. Yet private property was no otherwise attacked than as a person was appointed to administer and enjoy the revenues of a college in a manner and by persons not authorized by the constitution of the college. A majority of the members of the corporation would not comply with the king's wishes. A minority would. The object was therefore to make this minority a majority. To this end the king's commissioners were directed to interfere in the case, and they united with the two complying fellows, and expelled the rest; and thus effected a change in the government of the college. The language in which Mr. Hume and all other writers speak of this abortive attempt of oppression, shows that colleges were esteemed to be, as they truly are, private corporations, and the property and privileges which belong to them private property and private privileges. Court lawyers were found to justify the king in dispensing with the laws; that is, in assuming and exercising a legislative authority. But no lawyer, not even a court lawyer, in the reign of King James the Second, as far as appears, was found to say that, even by this high authority, he could infringe the franchises of the fellows of a college, and take away their livings. Mr. Hume gives the reason; it is, that such franchises were regarded, in a most emphatic sense, as private property.

If it could be made to appear that the trustees and the president and professors held their offices and franchises during the pleasure of the Legislature, and that the property holden belonged to the State, then indeed the Legis-

lature have done no more than they had a right to do. But this is not so. The charter is a charter of privileges and immunities; and these are holden by the trustees expressly against the State forever.

It is admitted that the State, by its courts of law, can enforce the will of the donor, and compel a faithful execution of the trust. The plaintiffs claim no exemption from legal responsibility. They hold themselves at all times answerable to the law of the land, for their conduct in the trust committed to them. They ask only to hold the property of which they are owners, and the franchises which belong to them, until they shall be found, by due course and process of law, to have forfeited them.

It can make no difference whether the Legislature exercise the power it has assumed by removing the trustees and the president and professors, directly and by name, or by appointing others to expel them. The principle is the same, and in point of fact the result has been the same. If the entire franchise cannot be taken away, neither can it be essentially impaired. If the trustees are legal owners of the property, they are sole owners. If they are visitors, they are sole visitors. No one will be found to say, that, if the Legislature may do what it has done, it may not do anything, and everything which it may choose to do, relative to the property of the corporation, and the privileges of its members and officers.

If the view which has been taken of this question be at all correct, this was an eleemosynary corporation, a private charity. The property was private property. The trustees were visitors, and the right to hold the charter, administer the funds, and visit and govern the college, was a franchise and privilege, solemnly granted to them. The use being

public in no way diminishes their legal estate in the property, or their title to the franchise. There is no principle, nor any case, which declares that a gift to such a corporation is a gift to the public. The acts in question violate property. They take away privileges, immunities, and franchises. They deny to the trustees the protection of the law; and they are retrospective in their operation. In all which respects they are against the Constitution of New Hampshire.

The plaintiffs contend, in the second place, that the acts in question are repugnant to the tenth section of the first article of the Constitution of the United States. The material words of that section are: "No State shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts."

The object of these most important provisions in the National Constitution has often been discussed, both here and elsewhere. It is exhibited with great clearness and force by one of the distinguished persons who framed that instrument. "Bills of attainder, *ex post facto* laws, and laws impairing the obligation of contracts, are contrary to the first principles of the social compact, and to every principle of sound legislation. The two former are expressly prohibited by the declarations prefixed to some of the State Constitutions, and all of them are prohibited by the spirit and scope of these fundamental charters. Our own experience has taught us, nevertheless, that additional fences against these dangers ought not to be omitted. Very properly, therefore, have the Convention added this constitutional bulwark, in favor of personal security and private rights; and I am much deceived, if they have not, in so doing, as faithfully consulted the genuine sentiments as the

undoubted interests of their constituents. The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret, and with indignation, that sudden changes, and legislative interferences in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators, and snares to the more industrious and less informed part of the community. They have seen, too, that one legislative interference is but the link of a long chain of repetitions; every subsequent interference being naturally produced by the effects of the preceding."

It has already been decided in this court, that a grant is a contract, within the meaning of this provision; and that a grant by a State is also a contract, as much as the grant of an individual. In the case of Fletcher *v.* Peck this court says: "A contract is a compact between two or more parties, and is either executory or executed. An executory contract is one in which a party binds himself to do, or not to do, a particular thing; such was the law under which the conveyance was made by the government. A contract executed is one in which the object of contract is performed; and this, says Blackstone, differs in nothing from a grant. The contract between Georgia and the purchasers was executed by the grant. A contract executed, as well as one which is executory, contains obligations binding on the parties. A grant, in its own nature, amounts to an extinguishment of the right of the grantor, and implies a contract not to reassert that right. If, under a fair construction of the Constitution, grants are comprehended under the term contracts, is a grant from the State excluded from the operation of the provision? Is the clause to be considered as inhibiting the State from impairing

the obligation of contracts between two individuals, but as excluding from that inhibition contracts made with itself? The words themselves contain no such distinction. They are general, and are applicable to contracts of every description. If contracts made with the State are to be exempted from their operation, the exception must arise from the character of the contracting party, not from the words which are employed. Whatever respect might have been felt for the State sovereignties, it is not to be disguised that the framers of the Constitution viewed with some apprehension the violent acts which might grow out of the feelings of the moment; and that the people of the United States, in adopting that instrument, have manifested a determination to shield themselves and their property from the effects of those sudden and strong passions to which men are exposed. The restrictions on the legislative power of the States are obviously founded in this sentiment; and the Constitution of the United States contains what may be deemed a bill of rights for the people of each State."

It has also been decided that a grant by a State before the Revolution is as much to be protected as a grant since. But the case of Terrett *v.* Taylor, before cited, is of all others most pertinent to the present argument. Indeed, the judgment of the court in that case seems to leave little to be argued or decided in this. "A private corporation," say the court, "created by the Legislature, may lose its franchises by a misuser or a nonuser of them; and they may be resumed by the government under a judicial judgment upon a *quo warranto* to ascertain and enforce the forfeiture. This is the common law of the land, and is a tacit condition annexed to the creation of every such corporation. Upon a change of government, too, it may be admitted that such

exclusive privileges attached to a private corporation as are inconsistent with the new government may be abolished. In respect, also, to public corporations which exist only for public purposes, such as counties, towns, cities, and so forth, the Legislature may, under proper limitations, have a right to change, modify, enlarge, or restrain them, securing, however, the property for the uses of those for whom and at whose expense it was originally purchased. But that the Legislature can repeal statutes creating private corporations, or confirming to them property already acquired under the faith of previous laws, and by such repeal can vest the property of such corporations exclusively in the State, or dispose of the same to such purposes as they please, without the consent or default of the corporators, we are not prepared to admit; and we think ourselves standing upon the principles of natural justice, upon the fundamental laws of every free government, upon the spirit and letter of the Constitution of the United States, and upon the decisions of most respectable judicial tribunals, in resisting such a doctrine."

This court, then, does not admit the doctrine, that a Legislature can repeal statutes creating private corporations. If it cannot repeal them altogether, of course it cannot repeal any part of them, or impair them, or essentially alter them, without the consent of the corporators. If, therefore, it has been shown that this college is to be regarded as a private charity, this case is embraced within the very terms of that decision. A grant of corporate powers and privileges is as much a contract as a grant of land. What proves all charters of this sort to be contracts is, that they must be accepted to give them force and effect. If they are not accepted, they are void. And in the case of

an existing corporation, if a new charter is given it, it may even accept part and reject the rest. In Rex *v.* Vice-Chancellor of Cambridge, Lord Mansfield says: "There is a vast deal of difference between a new charter granted to a new corporation (who must take it as it is given) and a new charter given to a corporation already in being, and acting either under a former charter or under prescriptive usage. The latter, a corporation already existing, are not obliged to accept the new charter *in toto*, and to receive either all or none of it; they may act partly under it, and partly under their old charter or prescription. The validity of these new charters must turn upon the acceptance of them." In the same case Mr. Justice Wilmot says: "It is the concurrence and acceptance of the university that gives the force to the charter of the crown." In the King *v.* Pasmore, Lord Kenyon observes: "Some things are clear: when a corporation exists capable of discharging its functions, the crown cannot obtrude another charter upon them; they may either accept or reject it."

In all cases relative to charters, the acceptance of them is uniformly alleged in the pleadings. This shows the general understanding of the law, that they are grants or contracts; and that parties are necessary to give them force and validity. In King *v.* Dr. Askew, it is said: "The crown cannot oblige a man to be a corporator, without his consent; he shall not be subject to the inconveniences of it, without accepting it and assenting to it." These terms, "acceptance" and "assent," are the very language of contract. In Ellis *v.* Marshall, it was expressly adjudged that the naming of the defendant among others, in an act of incorporation, did not of itself make him a corporator; and that his assent was necessary to that end. The court speak

of the act of incorporation as a grant, and observe: "That a man may refuse a grant, whether from the government or an individual, seems to be a principle too clear to require the support of authorities." But Justice Buller, in King *v.* Pasmore, furnishes, if possible, a still more direct and explicit authority. Speaking of a corporation for government, he says: "I do not know how to reason on this point better than in the manner urged by one of the relator's counsel, who considered the grant of incorporation to be a compact between the crown and a certain number of the subjects, the latter of whom undertake, in consideration of the privileges which are bestowed, to exert themselves for the good government of the place." This language applies with peculiar propriety and force to the case before the court. It was in consequence of the "privileges bestowed," that Dr. Wheelock and his associates undertook to exert themselves for the instruction and education of youth in this college; and it was on the same consideration that the founder endowed it with his property.

And because charters of incorporation are of the nature of contracts, they cannot be altered or varied but by consent of the original parties. If a charter be granted by the king, it may be altered by a new charter granted by the king, and accepted by the corporators. But if the first charter be granted by Parliament, the consent of Parliament must be obtained to any alteration. In King *v.* Miller, Lord Kenyon says: "Where a corporation takes its rise from the king's charter, the king by granting, and the corporation by accepting another charter, may alter it, because it is done with the consent of all the parties who are competent to consent to the alteration."

There are, in this case, all the essential constitutent parts

of a contract. There is something to be contracted about, there are parties, and there are plain terms in which the agreement of the parties on the subject of the contract is expressed. There are mutual considerations and inducements. The charter recites, that the founder, on his part, has agreed to establish his seminary in New Hampshire, and to enlarge it beyond its original design, among other things, for the benefit of that Province; and thereupon a charter is given to him and his associates, designated by himself, promising and assuring to them, under the plighted faith of the State, the right of governing the college and administering its concerns in the manner provided in the charter. There is a complete and perfect grant to them of all the power of superintendence, visitation, and government. Is not this a contract? If lands or money had been granted to him and his associates, for the same purposes, such grant could not be rescinded. And is there any difference, in legal contemplation, between a grant of corporate franchises and a grant of tangible property? No such difference is recognized in any decided case, nor does it exist in the common apprehension of mankind.

It is therefore contended that this case falls within the true meaning of this provision of the Constitution, as expounded in the decisions of this court; that the charter of 1769 is a contract, a stipulation or agreement, mutual in its considerations, express and formal in its terms, and of a most binding and solemn nature. That the acts in question impair this contract, has already been sufficiently shown. They repeal and abrogate its most essential parts.

A single observation may not be improper on the opinion of the court of New Hampshire, which has been published. The learned judges who delivered that opinion have viewed

this question in a very different light from that in which the plaintiffs have endeavored to exhibit it. After some general remarks, they assume that this college is a public corporation; and on this basis their judgment rests. Whether all colleges are not regarded as private and eleemosynary corporations, by all law writers and all judicial decisions; whether this college was not founded by Dr. Wheelock; whether the charter was not granted at his request, the better to execute a trust, which he had already created; whether he and his associates did not become visitors, by the charter; and whether Dartmouth College be not, therefore, in the strictest sense, a private charity, are questions which the learned judges do not appear to have discussed.

It is admitted in that opinion, that, if it be a prviate corporation, its rights stand on the same ground as those of an individual. The great question, therefore, to be decided is, To which class of corporations do colleges thus founded belong? And the plaintiffs have endeavored to satisfy the court, that, according to the well-settled principles and uniform decisions of law, they are private, eleemosynary corporations.

Much has heretofore been said on the necessity of admitting such a power in the Legislature as has been assumed in this case. Many cases of possible evil have been imagined, which might otherwise be without remedy. Abuses, it is contended, might arise in the management of such institutions, which the ordinary courts of law would be unable to correct. But this is only another instance of that habit of supposing extreme cases, and then of reasoning from them, which is the constant refuge of those who are obliged to defend a cause, which, upon its merits, is indefensible. It would be sufficient to say in answer, that it is not pretended

that there was here any such case of necessity. But a still more satisfactory answer is, that the apprehension of danger is groundless, and therefore the whole argument fails. Experience has not taught us that there is danger of great evils or of great inconvenience from this source. Hitherto, neither in our country nor elsewhere have such cases of necessity occurred. The judicial establishments of the State are presumed to be competent to prevent abuses and violations of trust, in cases of this kind, as well as in all others. If they be not, they are imperfect, and their amendment would be a most proper subject for legislative wisdom. Under the government and protection of the general laws of the land, these institutions have always been found safe, as well as useful. They go on, with the progress of society, accommodating themselves easily, without sudden change or violence, to the alterations which take place in its condition, and in the knowledge, the habits, and pursuits of men. The English colleges were founded in Catholic ages. Their religion was reformed with the general reformation of the nation; and they are suited perfectly well to the purpose of educating the Protestant youth of modern times. Dartmouth College was established under a charter granted by the Provincial government; but a better constitution for a college, or one more adapted to the condition of things under the present government, in all material respects, could not now be framed. Nothing in it was found to need alteration at the Revolution. The wise men of that day saw in it one of the best hopes of future times, and commended it as it was, with paternal care, to the protection and guardianship of the government of the State. A charter of more liberal sentiments, of wiser provisions, drawn with more care, or in a better spirit, could not be

expected at any time or from any source. The college needed no change in its organization or government. That which it did need was the kindness, the patronage, the bounty of the Legislature; not a mock elevation to the character of a university, without the solid benefit of a shilling's donation to sustain the character; not the swelling and empty authority of establishing institutes and other colleges. This unsubstantial pageantry would seem to have been in derision of the scanty endowment and limited means of an unobtrusive, but useful and growing seminary. Least of all was there a necessity, or pretence of necessity, to infringe its legal rights, violate its franchises and privileges, and pour upon it these overwhelming streams of litigation.

But this argument from necessity would equally apply in all other cases. If it be well founded, it would prove, that, whenever any inconvenience or evil is experienced from the restrictions imposed on the Legislature by the Constitution, these restrictions ought to be disregarded. It is enough to say, that the people have thought otherwise. They have, most wisely, chosen to take the risk of occasional inconvenience from the want of power, in order that there might be a settled limit to its exercise, and a permanent security against its abuse. They have imposed prohibitions and restraints; and they have not rendered these altogether vain and nugatory by conferring the power of dispensation. If inconvenience should arise which the Legislature cannot remedy under the power conferred upon it, it is not answerable for such inconvenience. That which it cannot do within the limits prescribed to it, it cannot do at all. No Legislature in this country is able, and may the time never come when it shall be able, to apply to itself the memorable expression of a Roman pontiff: "Licet hoc

de jure non possumus, volumus tamen *de plenitudine potestatis.*"

The case before the court is not of ordinary importance, nor of every-day occurrence. It affects not this college only, but every college, and all the literary institutions of the country. They have flourished hitherto, and have become in a high degree respectable and useful to the community. They have all a common principle of existence, the inviolability of their charters. It will be a dangerous, a most dangerous experiment, to hold these institutions subject to the rise and fall of popular parties, and the fluctuations of political opinions. If the franchise may be at any time taken away, or impaired, the property also may be taken away, or its use perverted. Benefactors will have no certainty of effecting the object of their bounty; and learned men will be deterred from devoting themselves to the service of such institutions, from the precarious title of their offices. Colleges and halls will be deserted by all better spirits, and become a theatre for the contentions of politics. Party and faction will be cherished in the places consecrated to piety and learning. These consequences are neither remote nor possible only. They are certain and immediate.

When the court in North Carolina declared the law of the State, which repealed a grant to its university, unconstitutional and void, the Legislature had the candor and the wisdom to repeal the law. This example, so honorable to the State which exhibited it, is most fit to be followed on this occasion. And there is good reason to hope that a State, which has hitherto been so much distinguished for temperate counsels, cautious legislation, and regard to law, will not fail to adopt a course which will accord with her

highest and best interests, and in no small degree elevate her reputation.

It was for many and obvious reasons most anxiously desired that the question of the power of the Legislature over this charter should have been finally decided in the State court. An earnest hope was entertained that the judges of the court might have viewed the case in a light favorable to the rights of the trustees. That hope has failed. It is here that those rights are now to be maintained, or they are prostrated forever. "Omnia alia perfugia bonorum, subsidia, consilia, auxilia, jura ceciderunt Quem enim alium appellem? quem obtester? quem implorem? Nisi hoc loco, nisi apud vos, nisi per vos, judices, salutem nostram, quæ spe exigua extremaque pendet, tenuerimus; nihil est præterea quo confugere possimus."

AN ARGUMENT FOR THE PROSECUTION ON THE TRIAL OF JOHN FRANCIS KNAPP FOR THE MURDER OF CAPTAIN JOSEPH WHITE

I AM little accustomed, gentlemen, to the part which I am now attempting to perform. Hardly more than once or twice has it happened to me to be concerned on the side of the government in any criminal prosecution whatever; and never, until the present occasion, in any case affecting life.

But I very much regret that it should have been thought necessary to suggest to you that I am brought here to "hurry you against the law and beyond the evidence." I hope I have too much regard for justice, and too much respect for my own character, to attempt either; and were I to make such attempt, I am sure that in this court nothing can be carried against the law, and that gentlemen, intelligent and just as you are, are not, by any power, to be hurried beyond the evidence. Though I could well have wished to shun this occasion, I have not felt at liberty to withhold my professional assistance, when it is supposed that I may be in some degree useful in investigating and discovering the truth respecting this most extraordinary murder. It has seemed to be a duty incumbent on me, as on every other citizen, to do my best and my utmost to bring to light the perpetrators of this crime. Against the prisoner at the bar, as an individual, I cannot have the slightest prejudice. I would not do him the smallest injury or injustice. But I do not affect to be in-

different to the discovery and the punishment of this deep guilt. I cheerfully share in the opprobrium, how great soever it may be, which is cast on those who feel and manifest an anxious concern that all who had a part in planning, or a hand in executing, this deed of midnight assassination, may be brought to answer for their enormous crime at the bar of public justice.

Gentlemen, it is a most extraordinary case. In some respects, it has hardly a precedent anywhere; certainly none in our New England history. This bloody drama exhibited no suddenly excited, ungovernable rage. The actors in it were not surprised by any lion-like temptation springing upon their virtue, and overcoming it, before resistance could begin. Nor did they do the deed to glut savage vengeance, or satiate long-settled and deadly hate. It was a cool, calculating, money-making murder. It was all "hire and salary, not revenge." It was the weighing of money against life; the counting out of so many pieces of silver against so many ounces of blood.

An aged man, without an enemy in the world, in his own house, and in his own bed, is made the victim of a butcherly murder, for mere pay. Truly, here is a new lesson for painters and poets. Whoever shall hereafter draw the portrait of murder, if he will show it as it has been exhibited, where such example was last to have been looked for, in the very bosom of our New England society, let him not give it the grim visage of Moloch, the brow knitted by revenge, the face black with settled hate, and the bloodshot eye emitting livid fires of malice. Let him draw, rather, a decorous, smooth-faced, bloodless demon; a picture in repose, rather than in action; not so much an example of human nature in its depravity, and in its par-

oxysms of crime, as an infernal being, a fiend, in the ordinary display and development of his character.

The deed was executed with a degree of self-possession and steadiness equal to the wickedness with which it was planned. The circumstances now clearly in evidence spread out the whole scene before us. Deep sleep had fallen on the destined victim, and on all beneath his roof. A healthful old man, to whom sleep was sweet, the first sound slumbers of the night held him in their soft but strong embrace. The assassin enters, through the window already prepared, into an unoccupied apartment. With noiseless foot he paces the lonely hall, half lighted by the moon; he winds up the ascent of the stairs, and reaches the door of the chamber. Of this, he moves the lock, by soft and continued pressure, till it turns on its hinges without noise; and he enters, and beholds his victim before him. The room is uncommonly open to the admission of light. The face of the innocent sleeper is turned from the murderer, and the beams of the moon, resting on the gray locks of his aged temple, show him where to strike. The fatal blow is given! and the victim passes, without a struggle or a motion, from the repose of sleep to the repose of death! It is the assassin's purpose to make sure work; and he plies the dagger, though it is obvious that life has been destroyed by the blow of the bludgeon. He even raises the aged arm, that he may not fail in his aim at the heart, and replaces it again over the wounds of the poniard! To finish the picture, he explores the wrist for the pulse! He feels for it, and ascertains that it beats no longer! It is accomplished. The deed is done. He retreats, retraces his steps to the window, passes out through it as he came in, and escapes. He has done the murder. No eye has seen

him, no ear has heard him. The secret is his own, and it is safe!

Ah! gentlemen, that was a dreadful mistake. Such a secret can be safe nowhere. The whole creation of God has neither nook nor corner where the guilty can bestow it, and say it is safe. Not to speak of that Eye which pierces through all disguises, and beholds everything as in the splendor of noon, such secrets of guilt are never safe from detection, even by men. True it is, generally speaking, that "murder will out." True it is, that Providence hath so ordained, and doth so govern things, that those who break the great law of Heaven by shedding man's blood seldom succeed in avoiding discovery. Especially, in a case exciting so much attention as this, discovery must come, and will come, sooner or later. A thousand eyes turn at once to explore every man, everything, every circumstance, connected with the time and place; a thousand ears catch every whisper; a thousand excited minds intensely dwell on the scene, shedding all their light, and ready to kindle the slightest circumstance into a blaze of discovery. Meantime the guilty soul cannot keep its own secret. It is false to itself; or rather it feels an irresistible impulse of conscience to be true to itself. It labors under its guilty possession, and knows not what to do with it. The human heart was not made for the residence of such an inhabitant. It finds itself preyed on by a torment, which it dares not acknowledge to God or man. A vulture is devouring it, and it can ask no sympathy or assistance, either from heaven or earth. The secret which the murderer possesses soon comes to possess him; and, like the evil spirits of which we read, it overcomes him, and leads him whithersoever it will. He feels it beat-

ing at his heart, rising to his throat, and demanding disclosure. He thinks the whole world sees it in his face, reads it in his eyes, and almost hears its workings in the very silence of his thoughts. It has become his master. It betrays his discretion, it breaks down his courage, it conquers his prudence. When suspicions from without begin to embarrass him, and the net of circumstance to entangle him, the fatal secret struggles with still greater violence to burst forth. It must be confessed, it will be confessed; there is no refuge from confession but suicide, and suicide is confession.

Much has been said, on this occasion, of the excitement which has existed, and still exists, and of the extraordinary measures taken to discover and punish the guilty. No doubt there has been, and is, much excitement, and strange indeed it would be had it been otherwise. Should not all the peaceable and well-disposed naturally feel concerned, and naturally exert themselves to bring to punishment the authors of this secret assassination? Was it a thing to be slept upon or forgotten? Did you, gentlemen, sleep quite as quietly in your beds after this murder as before? Was it not a case for rewards, for meetings, for committees, for the united efforts of all the good, to find out a band of murderous conspirators, of midnight ruffians, and to bring them to the bar of justice and law? If this be excitement, is it an unnatural or an improper excitement?

It seems to me, gentlemen, that there are appearances of another feeling, of a very different nature and character; not very extensive, I would hope, but still there is too much evidence of its existence. Such is human nature, that some persons lose their abhorrence of crime in their

admiration of its magnificent exhibitions. Ordinary vice is reprobated by them, but extraordinary guilt, exquisite wickedness, the high flights and poetry of crime, seize on the imagination, and lead them to forget the depths of the guilt, in admiration of the excellence of the performance, or the unequalled atrocity of the purpose. There are those in our day who have made great use of this infirmity of our nature, and by means of it done infinite injury to the cause of good morals. They have affected not only the taste, but I fear also the principles, of the young, the heedless, and the imaginative, by the exhibition of interesting and beautiful monsters. They render depravity attractive, sometimes by the polish of its manners, and sometimes by its very extravagance; and study to show off crime under all the advantages of cleverness and dexterity. Gentlemen, this is an extraordinary murder, but it is still a murder. We are not to lose ourselves in wonder at its origin, or in gazing on its cool and skilful execution. We are to detect and to punish it; and while we proceed with caution against the prisoner, and are to be sure that we do not visit on his head the offences of others, we are yet to consider that we are dealing with a case of most atrocious crime, which has not the slightest circumstance about it to soften its enormity. It is murder; deliberate, concerted, malicious murder.

Although the interest of this case may have diminished by the repeated investigation of the facts; still, the additional labor which it imposes upon all concerned is not to be regretted, if it should result in removing all doubts of the guilt of the prisoner.

The learned counsel for the prisoner has said truly, that it is your individual duty to judge the prisoner; that it is your individual duty to determine his guilt or innocence;

and that you are to weigh the testimony with candor and fairness. But much at the same time has been said, which, although it would seem to have no distinct bearing on the trial, cannot be passed over without some notice.

A tone of complaint so peculiar has been indulged, as would almost lead us to doubt whether the prisoner at the bar, or the managers of this prosecution, are now on trial. Great pains have been taken to complain of the manner of the prosecution. We hear of getting up a case; of setting in motion trains of machinery; of foul testimony; of combinations to overwhelm the prisoner; of private prosecutors; that the prisoner is hunted, persecuted, driven to his trial; that everybody is against him; and various other complaints, as if those who would bring to punishment the authors of this murder were almost as bad as they who committed it.

In the course of my whole life, I have never heard before so much said about the particular counsel who happen to be employed; as if it were extraordinary that other counsel than the usual officers of the government should assist in the management of a case on the part of the government. In one of the last criminal trials in this county, that of Jackman for the "Goodridge robbery" (so called), I remember that the learned head of the Suffolk Bar, Mr. Prescott, came down in aid of the officers of the government. This was regarded as neither strange nor improper. The counsel for the prisoner, in that case, contented themselves with answering his arguments, as far as they were able, instead of carping at his presence.

Complaint is made that rewards were offered, in this case, and temptations held out to obtain testimony. Are not rewards always offered, when great and secret offences

are committed? Rewards were offered in the case to which I have alluded, and every other means taken to discover the offenders, that ingenuity or the most persevering vigilance could suggest. The learned counsel have suffered their zeal to lead them into a strain of complaint at the manner in which the perpetrators of this crime were detected, almost indicating that they regard it as a positive injury to them to have found out their guilt. Since no man witnessed it, since they do not now confess it, attempts to discover it are half esteemed as officious intermeddling and impertinent inquiry.

It is said, that here even a Committee of Vigilance was appointed. This is a subject of reiterated remark. This committee are pointed at, as though they had been officiously intermeddling with the administration of justice. They are said to have been "laboring for months" against the prisoner. Gentlemen, what must we do in such a case? Are people to be dumb and still, through fear of overdoing? Is it come to this, that an effort cannot be made, a hand cannot be lifted, to discover the guilty, without its being said there is a combination to overwhelm innocence? Has the community lost all moral sense? Certainly, a community that would not be roused to action upon an occasion such as this was, a community which should not deny sleep to their eyes, and slumber to their eyelids, till they had exhausted all the means of discovery and detection, must, indeed, be lost to all moral sense, and would scarcely deserve protection from the laws. The learned counsel have endeavored to persuade you, that there exists a prejudice against the persons accused of this murder. They would have you understand that it is not confined to this vicinity alone; but that even the Legislature have caught this spirit.

That through the procurement of the gentleman here styled private prosecutor, who is a member of the Senate, a special session of this court was appointed for the trial of these offenders. That the ordinary movements of the wheels of justice were too slow for the purposes devised. But does not everybody see and know, that it was matter of absolute necessity to have a special session of the court? When or how could the prisoners have been tried without a special session? In the ordinary arrangement of the courts, but one week in a year is allotted for the whole court to sit in this county. In the trial of all capital offences a majority of the court, at least, is required to be present. In the trial of the present case alone, three weeks have already been taken up. Without such special session, then, three years would not have been sufficient for the purpose. It is answer sufficient to all complaints on this subject to say, that the law was drawn by the late Chief-Justice himself, to enable the court to accomplish its duties, and to afford the persons accused an opportunity for trial without delay.

Again, it is said that it was not thought of making Francis Knapp, the prisoner at the bar, a principal till after the death of Richard Crowninshield, Jr.; that the present indictment is an afterthought; that "testimony was got up" for the occasion. It is not so. There is no authority for this suggestion. The case of the Knapps had not then been before the grand jury. The officers of the government did not know what the testimony would be against them. They could not, therefore, have determined what course they should pursue. They intended to arraign all as principals who should appear to have been principals, and all as accessories who should appear to have been accessories. All

this could be known only when the evidence should be produced.

But the learned counsel for the defendant take a somewhat loftier flight still. They are more concerned, they assure us, for the law itself, than even for their client. Your decision in this case, they say, will stand as a precedent. Gentlemen, we hope it will. We hope it will be a precedent both of candor and intelligence, of fairness and of firmness; a precedent of good sense and honest purpose pursuing their investigation discreetly, rejecting loose generalities, exploring all the circumstances, weighing each, in search of truth, and embracing and declaring the truth when found.

It is said, that "laws are made, not for the punishment of the guilty, but for the protection of the innocent." This is not quite accurate, perhaps, but if so, we hope they will be so administered as to give that protection. But who are the innocent whom the law would protect? Gentlemen, Joseph White was innocent. They are innocent who, having lived in the fear of God through the day, wish to sleep in his peace through the night, in their own beds. The law is established that those who live quietly may sleep quietly; that they who do no harm may feel none. The gentlemen can think of none that are innocent except the prisoner at the bar, not yet convicted. Is a proved conspirator to murder innocent? Are the Crowninshields and the Knapps innocent? What is innocence? How deep stained with blood, how reckless in crime, how deep in depravity may it be, and yet retain innocence? The law is made, if we would speak with entire accuracy, to protect the innocent by punishing the guilty. But there are those innocent out of a court, as

well as in; innocent citizens not suspected of crime, as well as innocent prisoners at the bar.

The criminal law is not founded in a principle of vengeance: it does not punish that it may inflict suffering. The humanity of the law feels and regrets every pain it causes, every hour of restraint it imposes, and more deeply still every life it forfeits. But it uses evil as the means of preventing greater evil. It seeks to deter from crime by the example of punishment. This is its true, and only true main object. It restrains the liberty of the few offenders, that the many who do not offend may enjoy their liberty. It takes the life of the murderer, that other murders may not be committed. The law might open the jails, and at once set free all persons accused of offences, and it ought to do so if it could be made certain that no other offences would hereafter be committed; because it punishes, not to satisfy any desire to inflict pain, but simply to prevent the repetition of crimes. When the guilty, therefore, are not punished, the law has so far failed of its purpose; the safety of the innocent is so far endangered. Every unpunished murder takes away something from the security of every man's life. Whenever a jury, through whimsical and ill-founded scruples, suffer the guilty to escape, they make themselves answerable for the augmented danger of the innocent.

We wish nothing to be strained against this defendant. Why, then, all this alarm? Why all this complaint against the manner in which the crime is discovered? The prisoner's counsel catch at supposed flaws of evidence, or bad character of witnesses, without meeting the case. Do they mean to deny the conspiracy? Do they mean to deny that the two Crowninshields and the two Knapps were conspira-

tors? Why do they rail against Palmer, while they do not disprove, and hardly dispute, the truth of any one fact sworn to by him? Instead of this, it is made matter of sentimentality that Palmer has been prevailed upon to betray his bosom companions and to violate the sanctity of friendship. Again I ask, Why do they not meet the case? If the fact is out, why not meet it? Do they mean to deny that Captain White is dead? One would have almost supposed even that, from some remarks that have been made. Do they mean to deny the conspiracy? Or, admitting a conspiracy, do they mean to deny only that Frank Knapp, the prisoner at the bar, was abetting in the murder, being present, and so deny that he was a principal? If a conspiracy is proved, it bears closely upon every subsequent subject of inquiry. Why do they not come to the fact? Here the defence is wholly indistinct. The counsel neither take the ground, nor abandon it. They neither fly, nor light. They hover. But they must come to a closer mode of contest. They must meet the facts, and either deny or admit them. Had the prisoner at the bar, then, a knowledge of this conspiracy or not? This is the question. Instead of laying out their strength in complaining of the *manner* in which the deed is discovered, of the extraordinary pains taken to bring the prisoner's guilt to light, would it not be better to show there was no guilt? Would it not be better to show his innocence? They say, and they complain, that the community feel a great desire that he should be punished for his crimes. Would it not be better to convince you that he has committed no crime?

Gentlemen, let us now come to the case. Your first inquiry, on the evidence, will be, Was Captain White murdered in pursuance of a conspiracy, and was the defendant

one of this conspiracy? If so, the second inquiry is, Was he so connected with the murder itself as that he is liable to be convicted as a *principal*? The defendant is indicted as a *principal*. If not guilty *as such*, you cannot convict him. The indictment contains three distinct classes of counts. In the first, he is charged as having done the deed with his own hand; in the second, as an aider and abettor to Richard Crowninshield, Jr., who did the deed; in the third, as an aider and abettor to some person unknown. If you believe him guilty on either of these counts, or in either of these ways, you must convict him.

It may be proper to say, as a preliminary remark, that there are two extraordinary circumstances attending this trial. One is, that Richard Crowninshield, Jr., the supposed immediate perpetrator of the murder, since his arrest, has committed suicide. He has gone to answer before a tribunal of perfect infallibility. The other is, that Joseph Knapp, the supposed originator and planner of the murder, having once made a full disclosure of the facts, under a promise of indemnity, is, nevertheless, not now a witness. Notwithstanding his disclosure and his promise of indemnity, he now refuses to testify. He chooses to return to his original state, and now stands answerable himself, when the time shall come for his trial. These circumstances it is fit you should remember, in your investigation of the case.

Your decision may affect more than the life of this defendant. If he be not convicted as principal, no one can be. Nor can any one be convicted of a participation in the crime as accessory. The Knapps and George Crowninshield will be again on the community. This shows the importance of the duty you have to perform, and serves to remind you of the care and wisdom necessary to be exercised

in its performance. But certainly these considerations do not render the prisoner's guilt any clearer, nor enhance the weight of the evidence against him. No one desires you to regard consequences in that light. No one wishes anything to be strained, or too far pressed against the prisoner. Still, it is fit you should see the full importance of the duty which devolves upon you.

And now, gentlemen, in examining this evidence, let us begin at the beginning, and see first what we know independent of the disputed testimony. This is a case of circumstantial evidence. And these circumstances, we think, are full and satisfactory. The case mainly depends upon them, and it is common that offences of this kind must be proved in this way. Midnight assassins take no witnesses. The evidence of the facts relied on has been somewhat sneeringly denominated, by the learned counsel, "circumstantial stuff," but it is not such stuff as dreams are made of. Why does he not rend this stuff? Why does he not scatter it to the winds? He dismisses it a little too summarily. It shall be my business to examine this stuff, and try its cohesion.

The letter from Palmer at Belfast, is that no more than flimsy stuff?

The fabricated letters from Knapp to the committee and to Mr. White, are they nothing but stuff?

The circumstance, that the housekeeper was away at the time the murder was committed, as it was agreed she would be, is that, too, a useless piece of the same stuff?

The facts, that the key of the chamber door was taken out and secreted; that the window was unbarred and unbolted; are these to be so slightly and so easily disposed of?

It is necessary, gentlemen, to settle now, at the commencement, the great question of a conspiracy. If there

was none, or the defendant was not a party, then there is no evidence here to convict him. If there was a conspiracy, and he is proved to have been a party, then these two facts have a strong bearing on others, and all the great points of inquiry. The defendant's counsel take no distinct ground, as I have already said, on this point, either to admit or to deny. They choose to confine themselves to a hypothetical mode of speech. They say, supposing there was a conspiracy, *non sequitur* that the prisoner is guilty as principal. Be it so. But still, if there was a conspiracy, and if he was a conspirator, and helped to plan the murder, this may shed much light on the evidence which goes to charge him with the execution of that plan.

We mean to make out the conspiracy; and that the defendant was a party to it; and then to draw all just inferences from these facts.

Let me ask your attention, then, in the first place, to those appearances, on the morning after the murder, which have a tendency to show that it was done in pursuance of a preconcerted plan of operation. What are they? A man was found murdered in his bed. No stranger had done the deed, no one unacquainted with the house had done it. It was apparent that somebody within had opened, and that somebody without had entered. There had obviously and certainly been concert and co-operation. The inmates of the house were not alarmed when the murder was perpetrated. The assassin had entered without any riot or any violence. He had found the way prepared before him. The house had been previously opened. The window was unbarred from within, and its fastening unscrewed. There was a lock on the door of the chamber in which Mr. White slept, but the key was gone. It had been taken away and se-

creted. The footsteps of the murderer were visible, outdoors, tending toward the window. The plank by which he entered the window still remained. The road he pursued had been thus prepared for him. The victim was slain, and the murderer had escaped. Everything indicated that somebody within had co-operated with somebody without. Everything proclaimed that some of the inmates, or somebody having access to the house, had had a hand in the murder. On the face of the circumstances, it was apparent, therefore, that this was a premeditated, concerted murder; that there had been a conspiracy to commit it. Who, then, were the conspirators? If not now found out, we are still groping in the dark, and the whole tragedy is still a mystery.

If the Knapps and the Crowninshields were not the conspirators in this murder, then there is a whole set of conspirators not yet discovered. Because, independent of the testimony of Palmer and Leighton, independent of all disputed evidence, we know, from uncontroverted facts, that this murder was, and must have been, the result of concert and co-operation between two or more. We know it was not done without plan and deliberation; we see, that whoever entered the house to strike the blow was favored and aided by some one who had been previously in the house, without suspicion, and who had prepared the way. This is concert, this is co-operation, this is conspiracy. If the Knapps and the Crowninshields, then, were not the conspirators, who were? Joseph Knapp had a motive to desire the death of Mr. White, and that motive has been shown.

He was connected by marriage with the family of Mr. White. His wife was the daughter of Mrs. Beckford, who was the only child of a sister of the deceased. The deceased

was more than eighty years old, and had no children. His only heirs were nephews and nieces. He was supposed to be possessed of a very large fortune, which would have descended, by law, to his several nephews and nieces in equal shares; or, if there was a will, then according to the will. But as he had but two branches of heirs, the children of his brother, Henry White, and of Mrs. Beckford, each of these branches, according to the common idea, would have shared one-half of his property.

This popular idea is not legally correct. But it is common, and very probably was entertained by the parties. According to this idea, Mrs. Beckford, on Mr. White's death, without a will, would have been entitled to one-half of his ample fortune; and Joseph Knapp had married one of her three children. There was a will, and this will gave the bulk of the property to others; and we learn from Palmer that one part of the design was to destroy the will before the murder was committed. There had been a previous will, and that previous will was known or believed to have been more favorable than the other to the Beckford family. So that, by destroying the last will, and destroying the life of the testator at the same time, either the first and more favorable will would be set up, or the deceased would have no will, which would be, as was supposed, still more favorable. But the conspirators not having succeeded in obtaining and destroying the last will, though they accomplished the murder, that will being found in existence and safe, and that will bequeathing the mass of the property to others, it seemed at the time impossible for Joseph Knapp, as for any one else, indeed, but the principal devisee, to have any motive which should lead to the murder. The key which unlocks the whole mystery is the knowledge of the intention

of the conspirators to steal the will. This is derived from Palmer, and it explains all. It solves the whole marvel. It shows the motive which actuated those, against whom there is much evidence, but who, without the knowledge of this intention, were not seen to have had a motive. This intention is proved, as I have said, by Palmer; and it is so congruous with all the rest of the case, it agrees so well with all facts and circumstances, that no man could well withhold his belief, though the facts were stated by a still less credible witness. If one desirous of opening a lock turns over and tries a bunch of keys till he finds one that will open it, he naturally supposes he has found *the* key of *that* lock. So, in explaining circumstances of evidence which are apparently irreconcilable or unaccountable, if a fact be suggested which at once accounts for all, and reconciles all, by whomsoever it may be stated, it is still difficult not to believe that such fact is the true fact belonging to the case. In this respect, Palmer's testimony is singularly confirmed. If it were false, his ingenuity could not furnish us such clear exposition of strange-appearing circumstances. Some truth not before known can alone do that.

When we look back, then, to the state of things immediately on the discovery of the murder, we see that suspicion would naturally turn at once, not to the heirs at law, but to those principally benefited by the will. They, and they alone, would be supposed or seem to have a direct object for wishing Mr. White's life to be terminated. And, strange as it may seem, we find counsel now insisting, that, if no apology, it is yet mitigation of the atrocity of the Knapps' conduct in attempting to charge this foul murder on Mr. White, the nephew and principal devisee, that public suspicion was already so directed! As if assassination of character were

excusable in proportion as circumstances may render it easy. Their endeavors, when they knew they were suspected themselves, to fix the charge on others, by foul means and by falsehood, are fair and strong proof of their own guilt. But more of that hereafter.

The counsel say that they might safely admit that Richard Crowninshield, Jr., was the perpetrator of this murder.

But how could they safely admit that? If that were admitted, everything else would follow. For why should Richard Crowninshield, Jr., kill Mr. White? He was not his heir, nor his devisee; nor was he his enemy. What could be his motive? If Richard Crowninshield, Jr., killed Mr. White, he did it at some one's procurement who himself had a motive. And who, having any motive, is shown to have had any intercourse with Richard Crowninshield, Jr., but Joseph Knapp, and this principally through the agency of the prisoner at the bar? It is the infirmity, the distressing difficulty of the prisoner's case, that his counsel cannot and dare not admit what they yet cannot disprove, and what all must believe. He who believes, on this evidence, that Richard Crowninshield, Jr., was the immediate murderer, cannot doubt that both the Knapps were conspirators in that murder. The counsel, therefore, are wrong, I think, in saying they might safely admit this. The admission of so important and so connected a fact would render it impossible to contend further against the proof of the entire conspiracy, as we state it.

What, then, was this conspiracy? J. J. Knapp, Jr., desirous of destroying the will, and of taking the life of the deceased, hired a ruffian, who, with the aid of other ruffians, was to enter the house, and murder him in his bed.

As far back as January this conspiracy began. Endicott

testifies to a conversation with J. J. Knapp at that time, in which Knapp told him that Captain White had made a will, and given the principal part of his property to Stephen White. When asked how he knew, he said, "Black and white don't lie." When asked if the will was not locked up, he said, "There is such a thing as two keys to the same lock." And speaking of the then late illness of Captain White, he said, that Stephen White would not have been sent for if *he* had been there.

Hence it appears, that as early as January Knapp had a knowledge of the will, and that he had access to it by means of false keys. This knowledge of the will, and an intent to destroy it, appear also from Palmer's testimony, a fact disclosed to him by the other conspirators. He says that he was informed of this by the Crowninshields on the 2d of April. But then it is said, that Palmer is not to be credited; that by his own confession he is a felon; that he has been in the State prison in Maine; and, above all, that he was intimately associated with these conspirators themselves. Let us admit these facts. Let us admit him to be as bad as they would represent him to be, still, in law, he is a competent witness. How else are the secret designs of the wicked to be proved, but by their wicked companions, to whom they have disclosed them? The government does not select its witnesses. The conspirators themselves have chosen Palmer. He was the confidant of the prisoners. The fact, however, does not depend on his testimony alone. It is corroborated by other proof; and, taken in connection with the other circumstances, it has strong probability. In regard to the testimony of Palmer, generally, it may be said that it is less contradicted, in all parts of it, either by himself or others, than that of any other

material witness, and that everything he has told is corroborated by other evidence, so far as it is susceptible of confirmation. An attempt has been made to impair his testimony, as to his being at the Halfway House on the night of the murder; you have seen with what success. Mr. Babb is called to contradict him. You have seen how little he knows, and even that not certainly; for he himself is proved to have been in an error by supposing Palmer to have been at the Halfway House on the evening of the 9th of April. At that time he is proved to have been at Dustin's, in Danvers. If, then, Palmer, bad as he is, has disclosed the secrets of the conspiracy, and has told the truth, there is no reason why it should not be believed. Truth is truth, come whence it may.

The facts show that this murder had been long in agitation; that it was not a new proposition on the 2d of April; that it had been contemplated for five or six weeks. Richard Crowninshield was at Wenham in the latter part of March, as testified by Starrett. Frank Knapp was at Danvers in the latter part of February, as testified by Allen. Richard Crowninshield inquired whether Captain Knapp was about home, when at Wenham. The probability is that they would open the case to Palmer as a new project. There are other circumstances that show it to have been some weeks in agitation. Palmer's testimony as to the transaction on the 2d of April is corroborated by Allen, and by Osborn's books. He says that Frank Knapp came there in the afternoon, and again in the evening. So the book shows. He says that Captain White had gone out to his farm on that day. So others prove. How could this fact, or these facts, have been known to Palmer, unless Frank Knapp had brought the knowledge? And was it

not the special object of this visit to give information of this fact, that they might meet him and execute their purpose on his return from his farm? The letter of Palmer, written at Belfast, bears intrinsic marks of genuineness. It was mailed at Belfast, May 13. It states facts that he could not have known, unless his testimony be true. This letter was not an afterthought; it is a genuine narrative. In fact, it says, "I know the business your brother Frank was transacting on the 2d of April." How could he have possibly known this, unless he had been there? The "one thousand dollars that was to be paid"—where could he have obtained this knowledge? The testimony of Endicott, of Palmer, and these facts, are to be taken together; and they most clearly show that the death of Captain White was caused by somebody interested in putting an end to his life.

As to the testimony of Leighton, as far as manner of testifying goes, he is a bad witness; but it does not follow from this that he is not to be believed. There are some strange things about him. It is strange, that he should make up a story against Captain Knapp, the person with whom he lived; that he never voluntarily told anything: all that he has said was screwed out of him. But the story could not have been invented by him; his character for truth is unimpeached; and he intimated to another witness, soon after the murder happened, that he knew something he should not tell. There is not the least contradiction in his testimony, though he gives a poor account of withholding it. He says that he was extremely *bothered* by those who questioned him. In the main story that he relates he is entirely consistent with himself. Some things are for him, and some against him. Examine the intrinsic probability of what he says. See if some allowance is not to be made for him, on

account of his ignorance of things of this kind. It is said to be extraordinary that he should have heard just so much of the conversation, and no more; that he should have heard just what was necessary to be proved, and nothing else. Admit that this is extraordinary; still, this does not prove it untrue. It is extraordinary that you twelve gentlemen should be called upon, out of all men in the county, to decide this case; no one could have foretold this three weeks since. It is extraordinary that the first clew to this conspiracy should have been derived from information given by the father of the prisoner at the bar. And in every case that comes to trial there are many things extraordinary. The murder itself is a most extraordinary one; but still we do not doubt its reality.

It is argued that this conversation between Joseph and Frank could not have been as Leighton has testified, because they had been together for several hours before; this subject must have been uppermost in their minds, whereas this appears to have been the commencement of their conversation upon it. Now this depends altogether upon the tone and manner of the expression; upon the particular word in the sentence which was emphatically spoken. If he had said, "When did you *see* Dick, Frank?" this would not seem to be the beginning of the conversation. With what emphasis it was uttered, it is not possible to learn; and therefore nothing can be made of this argument. If this boy's testimony stood alone, it should be received with caution. And the same may be said of the testimony of Palmer. But they do not stand alone. They furnish a clew to numerous other circumstances, which, when known, mutually confirm what would have been received with caution without such corroboration. How could Leighton

have made up this conversation? "When did you see Dick?" "I saw him this morning." "When is he going to kill the old man?" "I don't know." "Tell him, if he don't do it soon, I won't pay him." Here is a vast amount in few words. Had he wit enough to invent this? There is nothing so powerful as truth; and often nothing so strange. It is not even suggested that the story was made for him. There is nothing so extraordinary in the whole matter, as it would have been for this ignorant country boy to invent this story.

The acts of the parties themselves furnish strong presumption of their guilt. What was done on the receipt of the letter from Maine? This letter was signed by Charles Grant, Jr., a person not known to either of the Knapps, nor was it known to them that any other person besides the Crowninshields knew of the conspiracy. This letter, by the accidental omission of the word Jr., fell into the hands of the father, when intended for the son. The father carried it to Wenham, where both the sons were. They both read it. Fix your eye steadily on this part of the *circumstantial stuff* which is in the case, and see what can be made of it. This was shown to the two brothers on Saturday, the 15th of May. Neither of them knew Palmer. And if they had known him, they could not have known him to have been the writer of this letter. It was mysterious to them how any one at Belfast could have had knowledge of this affair. Their conscious guilt prevented due circumspection. They did not see the bearing of its publication They advised their father to carry it to the Committee of Vigilance, and it was so carried. On the Sunday following, Joseph began to think there might be something in it. Perhaps, in the meantime, he had seen one of the Crownin-

shields. He was apprehensive that they might be suspected; he was anxious to turn attention from their family. What course did he adopt to effect this? He addressed one letter, with a false name, to Mr. White, and another to the committee; and to complete the climax of his folly, he signed the letter addressed to the committee, "Grant," the same name as that which was signed to the letter received from Belfast. It was in the knowledge of the committee, that no person but the Knapps had seen this letter from Belfast; and that no other person knew its signature. It therefore must have been irresistibly plain to them that one of the Knapps was the writer of the letter received by the committee, charging the murder on Mr. White. Add to this the fact of its having been dated at Lynn, and mailed at Salem four days after it was dated, and who could doubt respecting it? Have you ever read or known of folly equal to this? Can you conceive of crime more odious and abominable? Merely to explain the apparent mysteries of the letter from Palmer, they excite the basest suspicions against a man, whom, if they were innocent, they had no reason to believe guilty; and whom, if they were guilty, they most certainly knew to be innocent. Could they have adopted a more direct method of exposing their own infamy? The letter to the committee has intrinsic marks of a knowledge of this transaction. It tells the *time* and the *manner* in which the murder was committed. Every line speaks the writer's condemnation. In attempting to divert attention from his family, and to charge the guilt upon another, he indelibly fixes it upon himself.

Joseph Knapp requested Allen to put these letters into the post-office, because, said he, "I wish to nip this silly affair in the bud." If this were not the order of an over-

ruling Providence, I should say that it was the silliest piece of folly that was ever practiced. Mark the destiny of crime. It is ever obliged to resort to such subterfuges; it trembles in the broad light; it betrays itself in seeking concealment. He alone walks safely who walks uprightly. Who for a moment can read these letters and doubt of Joseph Knapp's guilt? The constitution of nature is made to inform against him. There is no corner dark enough to conceal him. There is no turnpike-road broad enough or smooth enough for a man so guilty to walk in without stumbling. Every step proclaims his secret to every passenger. His own acts come out to fix his guilt. In attempting to charge another with his own crime, he writes his own confession. To do away the effect of Palmer's letter, signed Grant, he writes a letter himself and affixes to it the name of Grant. He writes in a disguised hand; but how could it happen that the same Grant should be in Salem that was at Belfast? This has brought the whole thing out. Evidently he did it, because he has adopted the same style. Evidently he did it, because he speaks of the price of blood, and of other circumstances connected with the murder, that no one but a conspirator could have known.

Palmer says he made a visit to the Crowninshields, on the 9th of April. George then asked him whether he had heard of the murder. Richard inquired whether he had heard the music at Salem. They said that they were suspected, that a committee had been appointed to search houses; and that they had melted up the dagger, the day after the murder, because it would be a suspicious circumstance to have it found in their possession. Now this committee was not appointed, in fact, until Friday evening.

But this proves nothing against Palmer; it does not prove that George did not tell him so; it only proves that he gave a false reason for a fact. They had heard that they were suspected; how could they have heard this, unless it were from the whisperings of their own consciences? Surely this rumor was not then public.

About the 27th of April, another attempt was made by the Knapps to give a direction to public suspicion. They reported themselves to have been robbed, in passing from Salem to Wenham, near Wenham Pond. They came to Salem and stated the particulars of the adventure. They described persons, their dress, size, and appearance, who had been suspected of the murder. They would have it understood that the community was infested by a band of ruffians, and that they themselves were the particular objects of their vengeance. Now this turns out to be all fictitious, all false. Can you conceive of anything more enormous, any wickedness greater, than the circulation of such reports? than the allegation of crimes, if committed, capital? If no such crime had been committed, then it reacts with double force upon themselves, and goes very far to show their guilt. How did they conduct themselves on this occasion? Did they make hue and cry? Did they give information that they had been assaulted that night at Wenham? No such thing. They rested quietly that night; they waited to be called on for the particulars of their adventure; they made no attempt to arrest the offenders; this was not their object. They were content to fill the thousand mouths of rumor, to spread abroad false reports, to divert the attention of the public from themselves; for they thought every man suspected them, because they knew they ought to be suspected.

The manner in which the compensation for this murder was paid is a circumstance worthy of consideration. By examining the facts and dates, it will satisfactorily appear that Joseph Knapp paid a sum of money to Richard Crowninshield, in five-franc pieces, on the 24th of April. On the 21st of April, Joseph Knapp received five hundred five-franc pieces, as the proceeds of an adventure at sea. The remainder of this species of currency that came home in the vessel was deposited in a bank at Salem. On Saturday, the 24th of April, Frank and Richard rode to Wenham. They were there with Joseph an hour or more, and appeared to be negotiating private business. Richard continued in the chaise; Joseph came to the chaise and conversed with him. These facts are proved by Hart and Leighton, and by Osborn's books. On Saturday evening, about this time, Richard Crowninshield is proved, by Lummus, to have been at Wenham, with another person whose appearance corresponds with Frank's. Can any one doubt this being the same evening? What had Richard Crowninshield to do at Wenham, with Joseph, unless it were this business? He was there before the murder; he was there after the murder; he was there clandestinely, unwilling to be seen. If it were not upon this business, let it be told what it was for. Joseph Knapp could explain it; Frank Knapp might explain it. But they do not explain it; and the inference is against them.

Immediately after this, Richard passes five-franc pieces; on the same evening, one to Lummus, five to Palmer; and near this time George passes three or four in Salem. Here are nine of these pieces passed by them in four days; this is extraordinary. It is an unusual currency; in ordinary business, few men would pass nine such pieces in the course

of a year. If they were not received in this way, why not explain how they came by them? Money was not so flush in their pockets that they could not tell whence it came, if it honestly came there. It is extremely important to them to explain whence this money came, and they would do it if they could. If, then, the price of blood was paid at this time, in the presence and with the knowledge of this defendant, does not this prove him to have been connected with this conspiracy?

Observe, also, the effect on the mind of Richard of Palmer's being arrested and committed to prison; the various efforts he makes to discover the fact; the lowering, through the crevices of the rock, the pencil and paper for him to write upon; the sending two lines of poetry, with the request that he would return the corresponding lines; the shrill and peculiar whistle; the inimitable exclamations of "Palmer! Palmer! Palmer!" All these things prove how great was his alarm; they corroborate Palmer's story, and tend to establish the conspiracy.

Joseph Knapp had a part to act in this matter. He must have opened the window, and secreted the key; he had free access to every part of the house; he was accustomed to visit there; he went in and out at his pleasure; he could do this without being suspected. He is proved to have been there the Saturday preceding.

If all these things, taken in connection, do not prove that Captain White was murdered in pursuance of a conspiracy, then the case is at an end.

Savary's testimony is wholly unexpected. He was called for a different purpose. When asked who the person was that he saw come out of Captain White's yard between three and four o'clock in the morning, he

answered, Frank Knapp. It is not clear that this is not true. There may be many circumstances of importance connected with this, though we believe the murder to have been committed between ten and eleven o'clock. The letter to Dr. Barstow states it to have been done about eleven o'clock; it states it to have been done with a blow on the head, from a weapon loaded with lead. Here is too great a correspondence with the reality not to have some meaning in it. Dr. Peirson was always of the opinion, that the two classes of wounds were made with different instruments, and by different hands. It is possible that one class was inflicted at one time, and the other at another. It is possible that on the last visit the pulse might not have entirely ceased to beat, and then the finishing stroke was given. It is said, that, when the body was discovered, some of the wounds wept, while the others did not. They may have been inflicted from mere wantonness. It was known that Captain White was accustomed to keep specie by him in his chamber; this perhaps may explain the last visit. It is proved, that this defendant was in the habit of retiring to bed, and leaving it afterward, without the knowledge of his family; perhaps he did so on this occasion. We see no reason to doubt the fact; and it does not shake our belief that the murder was committed early in the night.

What are the probabilities as to the time of the murder? Mr. White was an aged man; he usually retired to bed at about half-past nine. He slept soundest in the early part of the night; usually awoke in the middle and latter part; and his habits were perfectly well known. When would persons with a knowledge of these facts be most likely to approach him? Most certainly, in the first hour of his

sleep. This would be the safest time. If seen then going to or from the house, the appearance would be least suspicious. The earlier hour would then have been most probably selected.

Gentlemen, I shall dwell no longer on the evidence which tends to prove that there was a conspiracy, and that the prisoner was a conspirator. All the circumstances concur to make out this point. Not only Palmer swears to it, in effect, and Leighton, but Allen mainly supports Palmer, and Osborn's books lend confirmation, so far as possible from such a source. Palmer is contradicted in nothing, either by any other witness, or any proved circumstance or occurrence. Whatever could be expected to support him does support him. All the evidence clearly manifests, I think, that there was a conspiracy; that it originated with Joseph Knapp; that defendant became a party to it, and was one of its conductors, from first to last. One of the most powerful circumstances is Palmer's letter from Belfast. The amount of this is a direct charge on the Knapps of the authorship of this murder. How did they treat this charge; like honest men, or like guilty men? We have see how it was treated. Joseph Knapp fabricated letters, charging another person, and caused them to be put into the post-office.

I shall now proceed on the supposition, that it is proved that there was a conspiracy to murder Mr. White, and that the prisoner was party to it.

The second and the material inquiry is—Was the prisoner present at the murder, aiding and abetting therein?

This leads to the legal question in the case. What does the law mean, when it says, that, in order to charge him as

a principal, "he must be present aiding and abetting in the murder"?

In the language of the late Chief-Justice, "It is not required that the abettor shall be actually upon the spot when the murder is committed, or even in sight of the more immediate perpetrator of the victim, to make him a principal. If he be at a distance, co-operating in the act, by watching to prevent relief, or to give an alarm, or to assist his confederate in escape, having knowledge of the purpose and object of the assassin, this in the eye of the law is being present, aiding and abetting, so as to make him a principal in the murder."

"If he be at a distance co-operating." This is not a distance to be measured by feet or rods; if the intent to lend aid combine with a knowledge that the murder is to be committed, and the person so intending be so situate that he can by any possibility lend this aid in any manner, then he is present in legal contemplation. He need not lend any actual aid; to be ready to assist is assisting.

There are two sorts of murder; the distinction between them it is of essential importance to bear in mind: 1. Murder in an affray, or upon sudden and unexpected provocation. 2. Murder secretly, with a deliberate, predetermined intention to commit the crime. Under the first class, the question usually is, whether the offence be murder or manslaughter, in the person who commits the deed. Under the second class, it is often a question whether others than he who actually did the deed were present, aiding and assisting therein. Offences of this kind ordinarily happen when there is nobody present except those who go on the same design. If a riot should happen in the court-house, and one should kill another, this may be murder, or it may

not, according to the intention with which it was done; which is always matter of fact, to be collected from the circumstances at the time. But in secret murders, premeditated and determined on, there can be no doubt of the murderous intention; there can be no doubt, if a person be present, knowing a murder is to be done, of his concurring in the act. His being there is a proof of his intent to aid and abet; else, why is he there?

It has been contended, that proof must be given that the person accused did actually afford aid, did lend a hand in the murder itself; and without this proof, although he may be near by, he may be presumed to be there for an innocent purpose; he may have crept silently there to hear the news, or from mere curiosity to see what was going on.[1] Preposterous, absurd! Such an idea shocks all common-sense. A man is found to be a conspirator to commit a murder; he has planned it; he has assisted in arranging the time, the place, and the means; and he is found in the place, and at the time, and yet it is suggested that he might have been there, not for co-operation and concurrence, but from curiosity! Such an argument deserves no answer. It would be difficult to give it one, in decorous terms. Is it not to be taken for granted, that a man seeks to accomplish his own purposes? When he has planned a murder, and is present at its execution, is he there to forward or to thwart his own design? is he there to assist, or there to prevent? But "Curiosity!" He may be there from mere "curiosity!" Curiosity to witness the success of the execution of his own plan of murder! The very walls of a court-house ought not to stand, the plough-

[1] This seems to have been actually the case as regards J. F. Knapp.

share should run through the ground it stands on, where such an argument could find toleration.[1]

It is not necessary that the abettor should actually lend a hand, that he should take a part in the act itself; if he be present ready to assist, that is assisting. Some of the doctrines advanced would acquit the defendant, though he had gone to the bedchamber of the deceased, though he had been standing by when the assassin gave the blow. This is the argument we have heard to-day.

The court here said, they did not so understand the argument of the counsel for defendant. Mr. Dexter said, "The intent and power alone must co-operate."

No doubt the law is, that being ready to assist is assisting, if the party has the power to assist, in case of need. It is so stated by Foster, who is a high authority. "If A happeneth to be present at a murder, for instance, and taketh no part in it, nor endeavoreth to prevent it, nor apprehendeth the murderer, nor levyeth hue and cry after him, this strange behavior of his, though highly criminal, will not of itself render him either principal or accessory." "But if a fact amounting to murder should be committed in prosecution of some unlawful purpose, though it were but a bare trespass, to which A in the case last stated had consented, and he had gone in order to give assistance, if need were, for carrying it into execution, this would have amounted to murder in him, and in every person present and joining with him." "If the fact was committed in prosecution of the original purpose which was unlawful, the whole party will be involved in the guilt of him who gave the blow.

[1] And yet this argument, so absurd in Mr. Webster's opinion, was based on the exact fact.

For in combinations of this kind, the mortal stroke, though given by one of the party, is considered in the eye of the law, and of sound reason, too, as given by every individual present and abetting. The person actually giving the stroke is no more than the hand or instrument by which the others strike." The author, in speaking of being present, means actual presence; not actual in opposition to constructive, for the law knows no such distinction. There is but one presence, and this is the situation from which aid, or supposed aid, may be rendered. The law does not say where the person is to go, or how near he is to go, but that he must be where he may give assistance, or where the perpetrator may believe that he may be assisted by him. Suppose that he is acquainted with the design of the murderer, and has a knowledge of the time when it is to be carried into effect, and goes out with a view to render assistance, if need be; why, then, even though the murderer does not know of this, the person so going out will be an abettor in the murder.

It is contended that the prisoner at the bar could not be a principal, he being in Brown Street, because he could not there render assistance; and you are called upon to determine this case, according as you may be of opinion whether Brown Street was, or was not, a suitable, convenient, well-chosen place to aid in this murder. This is not the true question. The inquiry is not whether you would have selected this place in preference to all others, or whether you would have selected it at all. If the parties chose it, why should we doubt about it? How do we know the use they intended to make of it, or the kind of aid that he was to afford by being there? The question for you to consider is, Did the defendant go into Brown Street in aid of this

murder? Did he go there by agreement, by appointment with the perpetrator?[1] If so, everything else follows. The main thing, indeed the only thing, is to inquire whether he was in Brown Street by appointment with Richard Crowninshield. It might be to keep general watch; to observe the lights, and advise as to time of access; to meet the murderer on his return, to advise him as to his escape; to examine his clothes, to see if any marks of blood were upon them; to furnish exchange of clothes, or new disguise, if necessary; to tell him through what streets he could safely retreat, or whether he could deposit the club in the place designed; or it might be without any distinct object, but merely to afford that encouragement which would proceed from Richard Crowninshield's consciousness that he was near. It is of no consequence whether, in your opinion, the place was well chosen or not, to afford aid; if it was so chosen, if it was by appointment that he was there, it is enough. Suppose Richard Crowninshield, when applied to to commit the murder, had said, "I won't do it unless there can be some one near by to favor my escape; I won't go unless you will stay in Brown Street." Upon the gentleman's argument, he would not be an aider and abettor in the murder, because the place was not well chosen; though it is apparent that the being in the place chosen was a condition, without which the murder would never have happened.

You are to consider the defendant as one in the league, in the combination to commit the murder. If he was there by appointment with the perpetrator, he is an abettor. The concurrence of the perpetrator in his being there is proved by the previous evidence of the conspiracy. If Richard

[1] He did not.

Crowninshield, for any purpose whatsoever, made it a condition of the agreement, that Frank Knapp should stand as backer, then Frank Knapp was an aider and abettor; no matter what the aid was, or what sort it was, or degree, be it ever so little; even if it were to judge of the hour when it was best to go, or to see when the lights were extinguished, or to give an alarm if any one approached. Who better calculated to judge of these things than the murderer himself? and if he so determined them, that is sufficient.

Now as to the facts. Frank Knapp knew that the murder was that night to be committed; he was one of the conspirators, he knew the object, he knew the time. He had that day been to Wenham to see Joseph, and probably to Danvers to see Richard Crowninshield, for he kept his motions secret. He had that day hired a horse and chaise of Osborn, and attempted to conceal the purpose for which it was used; he had intentionally left the *place* and the *price* blank on Osborn's books. He went to Wenham by the way of Danvers; he had been told the week before to hasten Dick; he had seen the Crowninshields several times within a few days; he had a saddle-horse the Saturday night before; he had seen Mrs. Beckford at Wenham and knew she would not return that night. She had not been away before for six weeks, and probably would not soon be again. He had just come from Wenham. Every day, for the week previous, he had visited one or another of these conspirators, save Sunday, and then probably he saw them in town. When he saw Joseph on the 6th, Joseph had prepared the house, and would naturally tell him of it; there were constant communications between them; daily and nightly visitation; too much knowledge of these parties and this trans-

action, to leave a particle of doubt on the mind of any one, that Frank Knapp knew the murder was to be committed this night. The hour was come, and he knew it; if so, and he was in Brown Street, without explaining why he was there, can the jury for a moment doubt whether he was there to countenance, aid, or support; or for curiosity alone; or to learn how the wages of sin and death were earned by the perpetrator?

Here Mr. Webster read the law from Hawkins. 1 Hawk. 204, Lib. 1, ch. 32, sec. 7.

The perpetrator would derive courage, and strength, and confidence, from the knowledge that one of his associates was near by. If he was in Brown Street, he could have been there for no other purpose. If there for this purpose, then he was, in the language of the law, *present*, aiding and abetting in the murder.

His interest lay in being somewhere else. If he had nothing to do with the murder, no part to act, why not stay at home? Why should he jeopard his own life, if it was not agreed that he should be there? He would not voluntarily go where the very place would cause him to swing if detected. He would not voluntarily assume the place of danger. His taking this place proves that he went to give aid. His staying away would have made an alibi. If he had nothing to do with the murder, he would be at home, where he could prove his alibi. He knew he was in danger, because he was guilty of the conspiracy, and, if he had nothing to do, would not expose himself to suspicion or detection.

Did the prisoner at the bar countenance this murder? Did he concur, or did he non-concur, in what the perpetra-

tor was about to do? Would he have tried to shield him? Would he have furnished his cloak for protection? Would he have pointed out a safe way of retreat? As you would answer these questions, so you should answer the general question, whether he was there consenting to the murder, or whether he was there as a spectator only.

One word more on this presence, called constructive presence. What aid is to be rendered? Where is the line to be drawn, between acting, and omitting to act? Suppose he had been in the house, suppose he had followed the perpetrator to the chamber, what could he have done? This was to be a murder by stealth; it was to be a secret assassination. It was not their purpose to have an open combat; they were to approach their victim unawares, and silently give the fatal blow. But if he had been in the chamber, no one can doubt that he would have been an abettor; because of his presence, and ability to render services, if needed. What service could he have rendered, if there? Could he have helped him to fly? Could he have aided the silence of his movements? Could he have facilitated his retreat, on the first alarm? Surely, this was a case where there was more of safety in going alone than with another; where company would only embarrass. Richard Crowninshield would prefer to go alone. He knew his errand too well. His nerves needed no collateral support. He was not the man to take with him a trembling companion. He would prefer to have his aid at a distance. He would not wish to be encumbered by his presence. He would prefer to have him out of the house. He would prefer that he should be in Brown Street. But whether in the chamber, in the house, in the garden, or in the street, whatsoever is aiding in *actual presence* is aiding

in *constructive presence;* anything that is aid in one case is aid in the other.

If, then, the aid be anywhere, so as to embolden the perpetrator, to afford him hope or confidence in his enterprise, it is the same as though the person stood at his elbow with his sword drawn. His being there ready to act, with the power to act, is what makes him an abettor.

Here Mr. Webster referred to the cases of Kelly, of Hyde, and others, cited by counsel for the defendant, and showed that they did not militate with the doctrine for which he contended. The difference is, in those cases there was open violence; this was a case of secret assassination. The aid must meet the occasion. Here no acting was necessary, but watching, concealment of escape, management.

What are the *facts* in relation to this presence? Frank Knapp is proved to have been a conspirator, proved to have known that the deed was now to be done. Is it not probable that he was in Brown Street to concur in the murder? There were four conspirators. It was natural that some one of them should go with the perpetrator. Richard Crowninshield was to be the perpetrator; he was to give the blow. There is no evidence of any casting of the parts for the others. The defendant would probably be the man to take the second part. He was fond of exploits, he was accustomed to the use of sword-canes and dirks. If any aid was required, he was the man to give it. At least, there is no evidence to the contrary of this.

Aid could not have been received from Joseph Knapp, or from George Crowninshield. Joseph Knapp was at Wenham, and took good care to prove that he was there. George Crowninshield has proved satisfactorily where he was; that he was in other company, such as it was, until eleven

o'clock. This narrows the inquiry. This demands of the prisoner to show, if he was not in this place, where he was. It calls on him loudly to show this, and to show it truly. If he could show it, he would do it. If he does not tell, and that truly, it is against him. The defence of an alibi is a double-edged sword. He knew that he was in a situation where he might be called upon to account for himself. If he had had no particular appointment or business to attend to, he would have taken care to be able so to account. He would have been out of town, or in some good company. Has he accounted for himself on that night to your satisfaction?

The prisoner has attempted to prove an alibi in two ways. In the first place, by four young men with whom he says he was in company, on the evening of the murder, from seven o'clock till near ten o'clock. This depends upon the certainty of the night. In the second place, by his family, from ten o'clock afterward. This depends upon the certainty of the time of the night. These two classes of proof have no connection with each other. One may be true, and the other false, or they may both be true, or both be false. I shall examine this testimony with some attention, because, on a former trial, it made more impression on the minds of the court than on my own mind. I think, when carefully sifted and compared, it will be found to have in it more of plausibility than reality.

Mr. Page testifies, that on the evening of the 6th of April he was in company with Burchmore, Balch, and Forrester, and that he met the defendant about seven o'clock, near the Salem Hotel; that he afterward met him at Remond's, about nine o'clock, and that he was in company with him a considerable part of the evening. This young gentleman is a

member of college, and says that he came to town the Saturday evening previous; that he is now able to say that it was the night of the murder when he walked with Frank Knapp, from the recollection of the fact, that he called himself to an account, on the morning after the murder, as it is natural for men to do when an extraordinary occurrence happens. Gentlemen, this kind of evidence is not satisfactory; general impressions as to time are not to be relied on. If I were called on to state the particular day on which any witness testified in this cause, I could not do it. Every man will notice the same thing in his own mind. There is no one of these young men that could give an account of himself for any *other* day in the month of April. They are made to remember the fact, and then they think they remember the time. The witness has no means of knowing it was Tuesday rather than any other time. He did not know it at first; he could not know it afterward. He says he called himself to an account. This has no more to do with the murder than with the man in the moon. Such testimony is not worthy to be relied on in any forty-shilling cause. What occasion had he to call himself to an account? Did he suppose that he should be suspected? Had he any intimation of this conspiracy?

Suppose, gentlemen, you were either of you asked where you were, or what you were doing, on the fifteenth day of June; you could not answer this question without calling to mind some events to make it certain. Just as well may you remember on what you dined each day of the year past. Time is identical. Its subdivisions are all alike. No man knows one day from another, or one hour from another, but by some fact connected with it. Days and hours are not visible to the senses, nor to be apprehended and distinguished

by the understanding. The flow of time is known only by something which marks it; and he who speaks of the date of occurrences with nothing to guide his recollection speaks at random, and is not to be relied on. This young gentleman remembers the facts and occurrences; he knows nothing why they should not have happened on the evening of the 6th; but he knows no more. All the rest is evidently conjecture or impression.

Mr. White informs you, that he told him he could not tell what night it was. The first thoughts are all that are valuable in such case. They miss the mark by taking second aim.

Mr. Balch believes, but is not sure, that he was with Frank Knapp on the evening of the murder. He has given different accounts of the time. He has no means of making it certain. All he knows is, that it was some evening before Fast day. But whether Monday, Tuesday, or Saturday, he cannot tell.

Mr. Burchmore says, to the best of his belief, it was the evening of the murder. Afterward he attempts to speak positively, from recollecting that he mentioned the circumstance to William Peirce, as he went to the Mineral Spring on Fast day. Last Monday morning he told Colonel Putnam he could not fix the time. This witness stands in a much worse plight than either of the others. It is difficult to reconcile all he has said with any belief in the accuracy of his recollections.

Mr. Forrester does not speak with any certainty as to the night; and it is very certain that he told Mr. Loring and others that he did not know what night it was.

Now, what does the testimony of these four young men amount to? The only circumstance by which they approxi-

mate to an identifying of the night is, that three of them say it was cloudy; they think their walk was either on Monday or Tuesday evening, and it is admitted that Monday evening was clear, whence they draw the inference that it must have been Tuesday.

But, fortunately, there is one *fact* disclosed in their testimony that settles the question. Balch says, that on the evening, whenever it was, he saw the prisoner; the prisoner told him he was going out of town on horseback, for a distance of about twenty minutes' drive, and that he was going to get a horse at Osborn's. This was about seven o'clock. At about nine, Balch says he saw the prisoner again, and was then told by him that he had had his ride, and had returned. Now it appears by Osborn's books, that the prisoner had a saddle horse from his stable, not on Tuesday evening, the night of the murder, but on the Saturday evening previous. This fixes the time about which these young men testify, and is a complete answer and refutation of the attempted alibi on Tuesday evening.

I come now to speak of the testimony adduced by the defendant to explain where he was after ten o'clock on the night of the murder. This comes chiefly from members of the family; from his father and brothers.

It is agreed that the affidavit of the prisoner should be received as evidence of what his brother, Samuel H. Knapp, would testify if present. Samuel H. Knapp says, that, about ten minutes past ten o'clock, his brother, Frank Knapp, on his way to bed, opened his chamber door, made some remarks, closed the door, and went to his chamber; and that he did not hear him leave it afterward. How is this witness able to fix the time at ten minutes past ten?

There is no circumstance mentioned by which he fixes it. He had been in bed, probably asleep, and was aroused from his sleep by the opening of the door. Was he in a situation to speak of time with precision? Could he know, under such circumstances, whether it was ten minutes past ten, or ten minutes before eleven, when his brother spoke to him? What would be the natural result in such a case? But we are not left to conjecture this result. We have positive testimony on this point. Mr. Webb tells you that Samuel told him, on the 8th of June, "that he did not know what time his brother Frank came home, and that he was not at home when *he* went to bed." You will consider this testimony of Mr. Webb as indorsed upon this affidavit; and with this indorsement upon it, you will give it its due weight. This statement was made to him after Frank was arrested.

I come to the testimony of the father. I find myself incapable of speaking of him or his testimony with severity. Unfortunate old man! Another Lear, in the conduct of his children; another Lear, I apprehend, in the effect of his distress upon his mind and understanding. He is brought here to testify, under circumstances that disarm severity, and call loudly for sympathy. Though it is impossible not to see that his story cannot be credited, yet I am unable to speak of him otherwise than in sorrow and grief. Unhappy father! he strives to remember, perhaps persuades himself that he does remember, that on the evening of the murder he was himself at home at ten o'clock. He thinks, or seems to think, that his son came in at about five minutes past ten. He fancies that he remembers his conversation; he thinks he spoke of bolting the door; he thinks he asked the time of night; he seems to remember his then going to his bed.

Alas! these are but the swimming fancies of an agitated and distressed mind. Alas! they are but the dreams of hope, its uncertain lights, flickering on the thick darkness of parental distress. Alas! the miserable father knows nothing, in reality, of all these things.

Mr. Shepard says that the first conversation he had with Mr. Knapp was soon after the murder, and *before* the arrest of his sons. Mr. Knapp says it was *after* the arrest of his sons. His own fears led him to say to Mr. Shepard, that his "son Frank was at home that night; and so Phippen told him," or "as Phippen told him." Mr. Shepard says that he was struck with the remark at the time; that it made an unfavorable impression on his mind; he does not tell you what that impression was, but when you connect it with the previous inquiry he had made, whether Frank had continued to associate with the Crowninshields, and recollect that the Crowninshields were then known to be suspected of this crime, can you doubt what this impression was? can you doubt as to the fears he then had?

This poor old man tells you that he was greatly perplexed at the time; that he found himself in embarrassed circumstances; that on this very night he was engaged in making an assignment of his property to his friend, Mr. Shepard. If ever charity should furnish a mantle for error, it should be here. Imagination cannot picture a more deplorable, distressed condition.

The same general remarks may be applied to his conversation with Mr. Treadwell, as have been made upon that with Mr. Shepard. He told him that he believed Frank was at home about the usual time. In his conversations with either of these persons, he did not pretend to know, of his own knowledge, the time that he came home. He

now tells you positively that he recollects the time, and that he so told Mr. Shepard. He is directly contradicted by both these witnesses, as respectable men as Salem affords.

This idea of an alibi is of recent origin. Would Samuel Knapp have gone to sea if it were then thought of? His testimony, if true, was too important to be lost. If there be any truth in this part of the alibi, it is so near in point of time that it cannot be relied on. The mere variation of half an hour would avoid it. The mere variations of different timepieces would explain it.

Has the defendant proved where he was on that night? If you doubt about it, there is an end of it. The burden is upon him to satisfy you beyond all reasonable doubt. Osborn's books, in connection with what the young men state, are conclusive, I think, on this point. He has not, then, accounted for himself; he has attempted it, and has failed. I pray you to remember, gentlemen, that this is a case in which the prisoner would, more than any other, be rationally able to account for himself on the night of the murder, if he could do so. He was in the conspiracy, he knew the murder was then to be committed, and if he himself was to have no hand in its actual execution, he would of course, as a matter of safety and precaution, be somewhere else, and be able to prove afterward that he had been somewhere else. Having this motive to prove himself elsewhere, and the power to do it if he were elsewhere, his failing in such proof must necessarily leave a very strong inference against him.

But, gentlemen, let us now consider what is the evidence produced on the part of the government to prove that John Francis Knapp, the prisoner at the bar, was in Brown Street on the night of the murder. This is a point of vital im-

portance in this cause. Unless this be made out, beyond reasonable doubt, the law of *presence* does not apply to the case. The government undertake to prove that he was present aiding in the murder, by proving that he was in Brown Street for this purpose. Now, what are the undoubted facts? They are, that two persons were seen in that street, several times during that evening, under suspicious circumstances; under such circumstances as induced those who saw them to watch their movements. Of this there can be no doubt. Mirick saw a man standing at the post opposite his store from fifteen minutes before nine until twenty minutes after, dressed in a full frock-coat, glazed cap, and so forth, in size and general appearance answering to the prisoner at the bar. This person was waiting there; and whenever any one approached him, he moved to and from the corner, as though he would avoid being suspected or recognized. Afterward, two persons were seen by Webster, walking in Howard Street, with a slow, deliberate movement that attracted his attention. This was about half-past nine. One of these he took to be the prisoner at the bar, the other he did not know.

About half-past ten a person is seen sitting on the rope-walk steps, wrapped in a cloak. He drops his head when passed, to avoid being known. Shortly after, two persons are seen to meet in this street, without ceremony or salutation, and in a hurried manner to converse for a short time; then to separate, and run off with great speed. Now, on this same night a gentleman is slain, murdered in his bed, his house being entered by stealth from without; and his house situated within three hundred feet of this street. The windows of his chamber were in plain sight from this street; a weapon of death is afterward found in a place where these

persons were seen to pass, in a retired place, around which they had been seen lingering. It is now known that this murder was committed by four persons, conspiring together for this purpose. No account is given who these suspected persons thus seen in Brown Street and its neighborhood were. Now, I ask, gentlemen, whether you or any man can doubt that this murder was committed by the persons who were thus in and about Brown Street. Can any person doubt that they were there for purposes connected with this murder? If not for this purpose, what were they there for? When there is a cause so near at hand, why wander into conjecture for an explanation? Common-sense requires you to take the nearest adequate cause for a known effect. Who were these suspicious persons in Brown Street? There was something extraordinary about them; something noticeable, and noticed at the time; something in their appearance that aroused suspicion. And a man is found the next morning murdered in the near vicinity.

Now, so long as no other account shall be given of those suspicious persons, so long the inference must remain irresistible that they were the murderers. Let it be remembered that it is already shown that this murder was the result of conspiracy and of concert; let it be remembered, that the house, having been opened from within, was entered by stealth from without. Let it be remembered that Brown Street, where these persons were repeatedly seen under such suspicious circumstances, was a place from which every occupied room in Mr. White's house is clearly seen; let it be remembered that the place, though thus very near to Mr. White's house, is a retired and lonely place; and let it be remembered that the instrument of death was afterward found concealed very near the same spot.

Must not every man come to the conclusion that these persons thus seen in Brown Street were the murderers? Every man's own judgment, I think, must satisfy him that this must be so. It is a plain deduction of common-sense. It is a point on which each one of you may reason like a Hale or a Mansfield. The two occurrences explain each other. The murder shows why these persons were thus lurking, at that hour, in Brown Street; and their lurking in Brown Street shows who committed the murder.

If, then, the persons in and about Brown Street were the plotters and executors of the murder of Captain White, we know who they were, and you know that *there* is one of them.

This fearful concatenation of circumstances puts him to an account. He was a conspirator. He had entered into this plan of murder. The murder is committed, and he is known to have been within three minutes' walk of the place. He must account for himself. He has attempted this, and failed. Then, with all these general reasons to show he was actually in Brown Street, and his failures in his alibi, let us see what is the direct proof of his being there. But first, let me ask, is it not very remarkable that there is no attempt to show where Richard Crowninshield, Jr., was on that night? We hear nothing of him. He was seen in none of his usual haunts about the town. Yet, if he was the actual perpetrator of the murder, which nobody doubts, he was in the town somewhere. Can you, therefore, entertain a doubt that he was one of the persons seen in Brown Street? And as to the prisoner, you will recollect, that, since the testimony of the young men has failed to show where he was on that evening, the last we hear or know of him, on the day preceding the murder, is, that

at four o'clock, P.M., he was at his brother's in Wenham. He had left home, after dinner, in a manner doubtless designed to avoid observation, and had gone to Wenham, probably by way of Danvers. As we hear nothing of him after four o'clock, P.M., for the remainder of the day and evening; as he was one of the conspirators; as Richard Crowninshield, Jr., was another; as Richard Crowninshield, Jr., was in town in the evening, and yet seen in no usual place of resort—the inference is very fair, that Richard Crowninshield, Jr., and the prisoner were together, acting in execution of their conspiracy. Of the four conspirators, J. J. Knapp, Jr., was at Wenham, and George Crowninshield has been accounted for; so that if the persons seen in Brown Street were the murderers, one of them must have been Richard Crowninshield, Jr., and the other must have been the prisoner at the bar.

Now, as to the proof of his identity with one of the persons seen in Brown Street. Mr. Mirick, a cautious witness, examined the person he saw, closely, in a light night, and says that he thinks the prisoner at the bar is the person; and that he should not hesitate at all, if he were seen in the same dress. His opinion is formed partly from his own observation, and partly from the description of others. But this description turns out to be only in regard to the dress. It is said, that he is now more confident than on the former trial. If he has varied in his testimony make such allowance as you may think proper. I do not perceive any material variance. He thought him the same person, when he was first brought to court, and as he saw him get out of the chaise. This is one of the cases in which a witness is permitted to give an opinion. This witness is as honest as yourselves, neither willing nor swift; but he says,

he believes it was the man. His words are, "This is my opinion"; and this opinion it is proper for him to give. If partly founded on what he has heard, then this opinion is not to be taken; but if on what he *saw*, then you can have no better evidence. I lay no stress on similarity of dress. No man will ever lose his life by my voice on such evidence. But then it is proper to notice, that no inferences drawn from any *dissimilarity* of dress can be given in the prisoner's favor; because, in fact, the person seen by Mirick was dressed like the prisoner.

The description of the person seen by Mirick answers to that of the prisoner at the bar. In regard to the supposed discrepancy of statements, before and now, there would be no end to such minute inquiries. It would not be strange if witnesses should vary. I do not think much of slight shades of variation. If I believe the witness is honest, that is enough. If he has expressed himself more strongly now than then, this does not prove him false.

Peter E. Webster saw the prisoner at the bar, as he then thought, and still thinks, walking in Howard Street at half-past nine o'clock. He then thought it was Frank Knapp, and has not altered his opinion since. He knew him well; he had long known him. If he then thought it was he, this goes far to prove it. He observed him the more, as it was unusual to see gentlemen walk there at that hour. It was a retired, lonely street. Now, is there reasonable doubt that Mr. Webster did see him there that night? How can you have more proof than this? He judged by his walk, by his general appearance, by his deportment. We all judge in this manner. If you believe he is right, it goes a great way in this case. But then this person, it is said, had a cloak on, and that he could not, therefore,

be the same person that Mirick saw. If we were treating of men that had no occasion to disguise themselves or their conduct, there might be something in this argument. But as it is, there is little in it. It may be presumed that they would change their dress. This would help their disguise. What is easier than to throw off a cloak, and again put it on? Perhaps he was less fearful of being known when alone, than when with the perpetrator.

Mr. Southwick swears all that a man can swear. He has the best means of judging that could be had at the time. He tells you that he left his father's house at half-past ten o'clock, and as he passed to his own house in Brown Street he saw a man sitting on the steps of the rope-walk; that he passed him three times, and each time he held down his head, so that he did not see his face. That the man had on a cloak, which was not wrapped around him, and a glazed cap. That he took the man to be Frank Knapp at the time; that, when he went into his house, he told his wife that he thought it was Frank Knapp; that he knew him well, having known him from a boy. And his wife swears that he did so tell her when he came home. What could mislead this witness at the time? He was not then suspecting Frank Knapp of anything. He could not then be influenced by any prejudice. If you believe that the witness saw Frank Knapp in this position at this time, it proves the case. Whether you believe it or not depends upon the credit of the witness. He swears it. If true, it is solid evidence. Mrs. Southwick supports her husband. Are they true? Are they worthy of belief? If he deserves the epithets applied to him, then he ought not to be believed. In this fact they cannot be mistaken; they are right, or they are perjured. As to his

not speaking to Frank Knapp, that depends upon their intimacy. But a very good reason is, Frank chose to disguise himself. This makes nothing against his credit. But it is said that he should not be believed. And why? Because, it is said, he himself now tells you, that, when he testified before the grand jury at Ipswich, he did not then say that he thought the person he saw in Brown Street was Frank Knapp, but that "the person was about the size of Selman." The means of attacking him, therefore, come from himself. If he is a false man, why should he tell truths against himself? They rely on his veracity to prove that he is a liar. Before you can come to this conclusion, you will consider whether all the circumstances are now known, that should have a bearing on this point. Suppose that, when he was before the grand jury, he was asked by the attorney this question, "Was the person you saw in Brown Street about the size of Selman?" and he answered Yes. This was all true. Suppose, also, that he expected to be inquired of further, and no further questions were put to him. Would it not be extremely hard to impute to him perjury for this? It is not uncommon for witnesses to think that they have done all their duty, when they have answered the questions put to them. But suppose that we admit that he did not then tell all he knew, this does not affect the *fact* at all; because he did tell, at the time, in the hearing of others, that the person he saw was Frank Knapp. There is not the slightest suggestion against the veracity or accuracy of Mrs. Southwick. Now she swears positively, that her husband came into the house and told her that he had seen a person on the rope-walk steps, and believed it was Frank Knapp.

It is said that Mr. Southwick is contradicted, also, by

Mr. Shillaber. I do not so understand Mr. Shillaber's testimony. I think what they both testify is reconcilable, and consistent. My learned brother said, on a similar occasion, that there is more probability, in such cases, that the persons hearing should misunderstand, than that the person speaking should contradict himself. I think the same remark applicable here.

You have all witnessed the uncertainty of testimony, when witnesses are called to testify what other witnesses said. Several respectable counsellors have been summoned, on this occasion, to give testimony of that sort. They have, every one of them, given different versions. They all took minutes at the time, and without doubt intend to state the truth. But still they differ. Mr. Shillaber's version is different from everything that Southwick has stated elsewhere. But little reliance is to be placed on slight variations in testimony, unless they are manifestly intentional. I think that Mr. Shillaber must be satisfied that he did not rightly understand Mr. Southwick. I confess I misunderstood Mr. Shillaber on the former trial, if I now rightly understand him. I, therefore, did not then recall Mr. Southwick to the stand. Mr. Southwick, as I read it, understood Mr. Shillaber as asking him about a person coming out of Newbury Street, and whether, for aught he knew, it might not be Richard Crowninshield, Jr. He answered, that he could not tell. He did not understand Mr. Shillaber as questioning him as to the person whom he saw sitting on the steps of the rope-walk. Southwick, on this trial, having heard Mr. Shillaber, has been recalled to the stand, and states that Mr. Shillaber entirely misunderstood him. This is certainly most probable, because the controlling fact in the case is not controverted; that is, that South-

wick did tell his wife, at the very moment he entered his house, that he had seen a person on the rope-walk steps, whom he believed to be Frank Knapp. Nothing can prove with more certainty than this that Southwick, at the time, *thought* the person whom he thus saw to be the prisoner at the bar.

Mr. Bray is an acknowledged accurate and intelligent witness. He was highly complimented by my brother on the former trial, although he now charges him with varying his testimony. What could be his motive? You will be slow in imputing to him any design of this kind. I deny altogether that there is any contradiction. There may be differences, but not contradiction. These arise from the difference in the questions put; the difference between believing and knowing. On the first trial, he said he did not know the person, and now says the same. Then, we did not do all we had a right to do. We did not ask him who he thought it was. Now, when so asked, he says he believes it was the prisoner at the bar. If he had then been asked this question, he would have given the same answer. That he has expressed himself more strongly, I admit; but he has not contradicted himself. He is more confident now; and that is all. A man may not assert a thing, and still may have no doubt upon it. Cannot every man see this distinction to be consistent? I leave him in that attitude; that only is the difference. On questions of identity, opinion is evidence. We may ask the witness, either if he knew who the person seen was, or who he thinks he was. And he may well answer, as Captain Bray has answered, that he does not know who it was, but that he thinks it was the prisoner.

We have offered to produce witnesses to prove, that, as

soon as Bray saw the prisoner, he pronounced him the same person. We are not at liberty to call them to corroborate our own witness. How, then, could this fact of the prisoner's being in Brown Street be better proved? If ten witnesses had testified to it, it would be no better. Two men, who knew him well, took it to be Frank Knapp, and one of them so said, when there was nothing to mislead them. Two others, who examined him closely, now swear to their opinion that he is the man.

Miss Jaqueth saw three persons pass by the rope-walk, several evenings before the murder. She saw one of them pointing toward Mr. White's house. She noticed that another had something which appeared to be like an instrument of music; that he put it behind him and attempted to conceal it. Who were these persons? This was but a few steps from the place where this apparent instrument of music (of *music* such as Richard Crowninshield, Jr., spoke of to Palmer) was afterward found. These facts prove this a point of rendezvous for these parties. They show Brown Street to have been the place for consultation and observation; and to this purpose it was well suited.

Mr. Burns' testimony is also important. What was the defendant's object in his private conversation with Burns? He knew that Burns was out that night; that he lived near Brown Street, and that he had probably seen him; and he wished him to say nothing. He said to Burns, "If you saw any of your friends out that night, say nothing about it; my brother Joe and I are your friends." This is plain proof that he wished to say to him, if you saw me in Brown Street that night, say nothing about it.

But it is said that Burns ought not to be believed, because he mistook the color of the dagger, and because he

has varied in his description of it. These are slight circumstances, if his general character be good. To my mind they are of no importance. It is for you to make what deduction you may think proper, on this account, from the weight of his evidence. His conversation with Burns, if Burns is believed, shows two things; first, that he desired Burns not to mention it, if he had seen him on the night of the murder; second, that he wished to fix the charge of murder on Mr. Stephen White. Both of these prove his own guilt.

I think you will be of opinion, that Brown Street was a probable place for the conspirators to assemble, and for an aid to be stationed. If we knew their whole plan, and if we were skilled to judge in such a case, then we could perhaps determine on this point better. But it is a retired place, and still commands a full view of the house; a lonely place, but still a place of observation. Not so lonely that a person would excite suspicion to be seen walking there in an ordinary manner; not so public as to be noticed by many. It is near enough to the scene of action in point of law. It was their point of centrality. The club was found near the spot, in a place provided for it, in a place that had been previously hunted out, in a concerted place of concealment. *Here was their point of rendezvous.* Here might the lights be seen. Here might an aid be secreted. Here was he within call. Here might he be aroused by the sound of the whistle. Here might he carry the weapon. Here might he receive the murderer after the murder.

Then, gentlemen, the general question occurs, Is it satisfactorily proved, by all these facts and circumstances, that the defendant was in and about Brown Street on the night of the murder? Considering that

the murder was effected by a conspiracy; considering that he was one of the four conspirators; considering that two of the conspirators have accounted for themselves on the night of the murder, and were not in Brown Street; considering that the prisoner does not account for himself, nor show where he was; considering that Richard Crowninshield, the other conspirator and the perpetrator, is not accounted for, nor shown to be elsewhere; considering that it is now past all doubt that two persons were seen lurking in and about Brown Street at different times, avoiding observation, and exciting so much suspicion that the neighbors actually watched them; considering that, if these persons thus lurking in Brown Street at that hour were not the murderers, it remains to this day wholly unknown who they were or what their business was; considering the testimony of Miss Jaqueth, and that the club was afterward found near this place; considering, finally, that Webster and Southwick saw these persons, and then took one of them for the defendant, and that Southwick then told his wife so, and that Bray and Mirick examined them closely, and now swear to their belief that the prisoner was one of them—it is for you to say, putting these considerations together, whether you believe the prisoner was actually in Brown Street at the time of the murder.

By the counsel for the prisoner, much stress has been laid upon the question, whether Brown Street was a place in which aid could be given, a place in which actual assistance could be rendered in this transaction. This must be mainly decided by their own opinion who selected the place; by what they thought at the time, according to their plan of operation.

If it was agreed that the prisoner should be there to as-

sist, it is enough. If they thought the place proper for their purpose, according to their plan, it is sufficient. Suppose we could prove expressly that they agreed that Frank should be there, and he was there, and you should think, it not a well-chosen place for aiding and abetting, must he be acquitted? No! It is not what *I* think or *you* think of the appropriateness of the place; it is what *they* thought *at the time.* If the prisoner was in Brown Street by appointment and agreement with the perpetrator, for the purpose of giving assistance if assistance should be needed, it may safely be presumed that the place was suited to such assistance as it was supposed by the parties might chance to become requisite.

If in Brown Street, was he there by appointment? was he there to aid, if aid was necessary? was he there for, or against, the murderer? to concur, or to oppose? to favor, or to thwart? Did the perpetrator know he was there, there waiting? If so, then it follows that he was there by appointment. He was at the post half an hour; he was waiting for somebody. This proves appointment, arrangement, previous agreement; then it follows that he was there to aid, to encourage, to embolden the perpetrator; and that is enough. If he were in such a situation as to afford aid, or that he was relied upon for aid, then he was aiding and abetting. It is enough that the conspirator desired to have him there. Besides, it may be well said, that he could afford just as much aid there as if he had been in Essex Street, as if he had been standing even at the gate, or at the window. It was not an act of power against power that was to be done; it was a secret act, to be done by stealth. The aid was to be placed in a position secure from observation. It was important to the security of both that he should be in

a lonely place. Now it is obvious that there are many purposes for which he might be in Brown Street.

1. Richard Crowninshield might have been secreted in the garden, and waiting for a signal;

2. Or he might be in Brown Street to advise him as to the time of making his entry into the house;

3. Or to favor his escape;

4. Or to see if the street was clear when he came out;

5. Or to conceal the weapon or the clothes;

6. To be ready for any unforeseen contingency.

Richard Crowninshield lived in Danvers. He would retire by the most secret way. Brown Street is that way. If you find him there, can you doubt why he was there?

If, gentlemen, the prisoner went into Brown Street, by appointment with the perpetrator, to render aid or encouragement in any of these ways, he was *present*, in legal contemplation, aiding and abetting in this murder. It is not necessary that he should have done anything; it is enough that he was ready to act, and in a place to act. If his being in Brown Street, by appointment, at the time of the murder, emboldened the purpose and encouraged the heart of the murderer, by the hope of instant aid, if aid should become necessary, then, without doubt, he was present, aiding and abetting, and was a principal in the murder.

I now proceed, gentlemen, to the consideration of the testimony of Mr. Colman. Although this evidence bears on every material part of the cause, I have purposely avoided every comment on it till the present moment, when I have done with the other evidence in the case. As to the admission of this evidence, there has been a great struggle, and its importance demanded it. The

general rule of law is, that confessions are to be received as evidence. They are entitled to great or to little consideration, according to the circumstances under which they are made. Voluntary, deliberate confessions are the most important and satisfactory evidence, but confessions hastily made, or improperly obtained, are entitled to little or no consideration. It is always to be inquired, whether they were purely voluntary, or were made under any undue influence of hope or fear; for, in general, if any influence were exerted on the mind of the person confessing, such confessions are not to be submitted to a jury.

Who is Mr. Colman? He is an intelligent, accurate, and cautious witness; a gentleman of high and well-known character, and of unquestionable veracity; as a clergyman, highly respectable; as a man, of fair name and fame.

Why was Mr. Colman with the prisoner? Joseph J. Knapp was his parishioner; he was the head of a family, and had been married by Mr. Colman. The interests of that family were dear to him. He felt for their afflictions, and was anxious to alleviate their sufferings. He went from the purest and best of motives to visit Joseph Knapp. He came to save, not to destroy; to rescue, not to take away life. In this family he thought there might be a chance to save one. It is a misconstruction of Mr. Colman's motives, at once the most strange and the most uncharitable, a perversion of all just views of his conduct and intentions the most unaccountable, to represent him as acting, on this occasion, in hostility to any one, or as desirous of injuring or endangering any one. He has stated his own motives, and his own conduct, in a manner to command universal belief and universal respect. For intelligence, for consistency, for accuracy, for caution, for candor, never did witness

acquit himself better, or stand fairer. In all that he did as a man, and all he has said as a witness, he has shown himself worthy of entire regard.

Now, gentlemen, very important confessions made by the prisoner are sworn to by Mr. Colman. They were made in the prisoner's cell, where Mr. Colman had gone with the prisoner's brother, N. Phippen Knapp. Whatever conversation took place was in the presence of N. P. Knapp. Now, on the part of the prisoner, two things are asserted; first, that such inducements were suggested to the prisoner, in this interview, that no confessions made by him ought to be received; second, that, in point of fact, he made no such confessions as Mr. Colman testifies to, nor, indeed, any confessions at all. These two propositions are attempted to be supported by the testimony of N. P. Knapp. These two witnesses, Mr. Colman and N. P. Knapp, differ entirely. There is no possibility of reconciling them. No charity can cover both. One or the other has sworn falsely. If N. P. Knapp be believed, Mr. Colman's testimony must be wholly disregarded. It is, then, a question of credit, a question of belief between the two witnesses. As you decide between these, so you will decide on all this part of the case.

Mr. Colman has given you a plain narrative, a consistent account, and has uniformly stated the same things. He is not contradicted, except by the testimony of Phippen Knapp. He is influenced, as far as we can see, by no bias, or prejudice, any more than other men, except so far as his character is now at stake. He has feelings on this point, doubtless, and ought to have. If what he has stated be not true, I cannot see any ground for his escape. If he be a true man, he must have heard what he testifies. No treachery

of memory brings to memory things that never took place. There is no reconciling his evidence with good intention, if the facts in it are not as he states them. He is on trial as to his veracity.

The relations in which the other witness stands deserves your careful consideration. He is a member of the family. He has the lives of two brothers depending, as he may think, on the effect of his evidence; depending on every word he speaks. I hope he has not another responsibility resting upon him. By the advice of a friend, and that friend Mr. Colman, J. Knapp made a full and free confession, and obtained a promise of pardon. He has since, as you know, probably by the advice of other friends, retracted that confession, and rejected the offered pardon. Events will show who of these friends and advisers advised him best, and befriended him most. In the meantime, if this brother, the witness, be one of these advisers, and advised the retraction, he has, most emphatically, the lives of his brothers resting upon his evidence and upon his conduct. Compare the situation of these two witnesses. Do you not see mighty motive enough on the one side, and want of all motive on the other? I would gladly find an apology for that witness, in his agonized feelings, in his distressed situation; in the agitation of that hour, or of this. I would gladly impute it to error, or to want of recollection, to confusion of mind, or disturbance of feeling. I would gladly impute to any pardonable source that which cannot be reconciled to facts and to truth; but, even in a case calling for so much sympathy, justice must yet prevail, and we must come to the conclusion, however reluctantly, which that demands from us.

It is said, Phippen Knapp was probably correct, because

he knew he should probably be called as a witness. Witness to what? When he says there was no confession, what could he expect to bear witness of? But I do not put it on the ground that he did not hear; I am compelled to put it on the other ground, that he did hear, and does not now truly tell what he heard.

If Mr. Colman were out of the case, there are other reasons why the story of Phippen Knapp should not be believed. It has in it inherent improbabilities. It is unnatural, and inconsistent with the accompanying circumstances. He tells you that they went "to the cell of Frank, to see if he had any objection to taking a trial, and suffering his brother to accept the offer of pardon"; in other words, to obtain Frank's consent to Joseph's making a confession; and in case this consent was not obtained, that the pardon would be offered to Frank. Did they bandy about the chance of life, between these two, in this way? Did Mr. Colman, after having given this pledge to Joseph, and after having received a disclosure from Joseph, go to the cell of Frank for such a purpose as this? It is impossible; it cannot be so.

Again, we know that Mr. Colman found the club the next day; that he went directly to the place of deposit, and found it at the first attempt, exactly where he says he had been informed it was. Now Phippen Knapp says that Frank had stated nothing respecting the club; that it was not mentioned in that conversation. He says, also, that he was present in the cell of Joseph all the time that Mr. Colman was there; that he believes he heard all that was said in Joseph's cell; and that he did not himself know where the club was, and never had known where it was, until he heard it stated in court. Now it is certain that Mr.

Colman says he did not learn the particular place of deposit of the club from Joseph; that he only learned from him that it was deposited under the steps of the Howard Street meeting-house, without defining the particular steps. It is certain, also, that he had more knowledge of the position of the club than this; else how could he have placed his hand on it so readily? and where else could he have obtained this knowledge, except from Frank?

Here Mr. Dexter said that Mr. Colman had had other interviews with Joseph, and might have derived the information from him at previous visits. Mr. Webster replied, that Mr. Colman had testified that he learned nothing in relation to the club until this visit. Mr. Dexter denied there being any such testimony. Mr. Colman's evidence was read, from the notes of the judges, and several other persons, and Mr. Webster then proceeded.

My point is to show that Phippen Knapp's story is not true, is not consistent with itself; that, taking it for granted, as he says, that he heard all that was said to Mr. Colman in both cells, by Joseph and by Frank; and that Joseph did not state particularly where the club was deposited; and that he knew as much about the place of deposit of the club as Mr. Colman knew; why, then Mr. Colman must either have been miraculously informed respecting the club, or Phippen Knapp has not told you the whole truth. There is no reconciling this, without supposing that Mr. Colman has misrepresented what took place in Joseph's cell, as well as what took place in Frank's cell.

Again, Phippen Knapp is directly contradicted by Mr. Wheatland. Mr. Wheatland tells the same story, as coming from Phippen Knapp, that Colman now tells. Here there

are two against one. Phippen Knapp says that Frank made no confession, and that he said he had none to make. In this he is contradicted by Wheatland. He, Phippen Knapp, told Wheatland, that Mr. Colman did ask Frank some questions, and that Frank answered them. He told him also what these answers were. Wheatland does not recollect the questions or answers, but recollects his reply; which was, "Is not this *premature?* I think this answer is sufficient to make Frank a principal." Here Phippen Knapp opposes himself to Wheatland, as well as to Mr. Colman. Do you believe Phippen Knapp against these two respectable witnesses, or them against him?

Is not Mr. Colman's testimony credible, natural, and proper? To judge of this, you must go back to that scene.

The murder had been committed; the two Knapps were now arrested; four persons were already in jail supposed to be concerned in it, the Crowninshields, and Selman, and Chase. Another person at the Eastward was supposed to be in the plot; it was important to learn the facts. To do this, some one of those suspected must be admitted to turn State's witness. The contest was, Who should have this privilege? It was understood that it was about to be offered to Palmer, then in Maine; there was no good reason why he should have the preference. Mr. Colman felt interested for the family of the Knapps, and particularly for Joseph. He was a young man who had hitherto maintained a fair standing in society; he was a husband. Mr. Colman was particularly intimate with his family. With these views he went to the prison. He believed that he might safely converse with the prisoner, because he thought confessions made to a clergyman were sacred, and that he could not be

called upon to disclose them. He went, the first time, in the morning, and was requested to come again. He went again at three o'clock; and was requested to call again at five o'clock. In the meantime he saw the father and Phippen, and they wished he would not go again, because it would be said the prisoners were making confession. He said he had engaged to go again at five o'clock; but would not, if Phippen would excuse him to Joseph. Phippen engaged to do this, and to meet him at his office at five o'clock. Mr. Colman went to the office at the time, and waited; but, as Phippen was not there, he walked down street, and saw him coming from the jail. He met him, and while in conversation near the church, he saw Mrs. Beckford and Mrs. Knapp going in a chaise toward the jail. He hastened to meet them, as he thought it not proper for them to go in at that time. While conversing with them near the jail, he received two distinct messages from Joseph, that he wished to see him. He thought it proper to go; and accordingly went to Joseph's cell, and it was while there that the disclosures were made. Before Joseph had finished his statement, Phippen came to the door; he was soon after admitted. A short interval ensued, and they went together to the cell of Frank. Mr. Colman went in by invitation of Phippen; he had come directly from the cell of Joseph, where he had for the first time learned the incidents of the tragedy. He was incredulous as to some of the facts which he had learned, they were so different from his previous impressions. He was desirous of knowing whether he could place confidence in what Joseph had told him. He, therefore, put the questions to Frank, as he has testified before you; in answer to which Frank Knapp informed him—

1. "That the murder took place between ten and eleven o'clock."

2. "That Richard Crowninshield was alone in the house."

3. "That he, Frank Knapp, went home afterward."

4. "That the club was deposited under the steps of the Howard Street meeting-house, and under the part nearest the burying-ground, in a rat hole."

5. "That the dagger or daggers had been worked up at the factory."

It is said that these five answers just fit the case; that they are just what was wanted, and neither more nor less. True, they are; but the reason is, because truth always fits. Truth is always congruous, and agrees with itself; every truth in the universe agrees with every other truth in the universe, whereas falsehoods not only disagree with truths, but usually quarrel among themselves. Surely Mr. Colman is influenced by no bias, no prejudice; he has no feelings to warp him, except, now that he is contradicted, he may feel an interest to be believed.

If you believe Mr. Colman, then the evidence is fairly in the case.

I shall now proceed on the ground that you do believe Mr. Colman.

When told that Joseph had determined to confess, the defendant said, "It is hard, or unfair, that Joseph should have the benefit of confessing, since the thing was done for his benefit." What thing was done for his benefit? Does not this carry an implication of the guilt of the defendant? Does it not show that he had a knowledge of the object and history of the murder?

The defendant said, "I told Joseph, when he proposed

it, that it was a silly business, and would get us into trouble." He knew, then, what this business was; he knew that Joseph proposed it, and that he agreed to it, else he could not get *us* into trouble; he understood its bearing and its consequences. Thus much was said, under circumstances that make it clearly evidence against him, before there is any pretence of an inducement held out. And does not this prove him to have had a knowledge of the conspiracy?

He knew the daggers had been destroyed, and he knew who committed the murder. How could he have innocently known these facts? Why, if by Richard's story, this shows him guilty of a knowledge of the murder, and of the conspiracy. More than all, he knew when the deed was done, and that he went home afterward. This shows his participation in that deed. "Went home afterward"! Home, from what scene? home, from what fact? home, from what transaction? home, from what place? This confirms the supposition that the prisoner was in Brown Street for the purposes ascribed to him. These questions were directly put, ard directly answered. He does not intimate that he received the information from another. Now, if he knows the time, and went home afterward, and does not excuse himself, is not this an admission that he had a hand in this murder? Already proved to be a conspirator in the murder, he now confesses that he knew who did it, at what time it was done, that he was himself out of his own house at the time, and went home afterward. Is not this conclusive, if not explained? Then comes the club. He told where it was. This is like possession of stolen goods. He is charged with the guilty knowledge of this concealment. He must show, not say, how he came by this knowledge. If a man

be found with stolen goods, he must prove how he came by them. The place of deposit of the club was premeditated and selected, and he knew where it was.

Joseph Knapp was an accessory, and an accessory only; he knew only what was told him. But the prisoner knew the particular spot in which the club might be found. This shows his knowledge something more than that of an accessory. This presumption must be rebutted by evidence, or it stands strong against him. He has too much knowledge of this transaction to have come innocently by it. It must stand against him until he explains it.

This testimony of Mr. Colman is represented as new matter, and therefore an attempt has been made to excite a prejudice against it. It is not so. How little is there in it, after all, that did not appear from other sources? It is mainly confirmatory. Compare what you learn from this confession with what you before knew.

As to its being proposed by Joseph, was not that known?

As to Richard's being alone in the house, was not that known?

As to the daggers, was not that known?

As to the time of the murder, was not that known?

As to his being out that night, was not that known?

As to his returning afterward, was not that known?

As to the club, was not that known?

So this information confirms what was known before, and fully confirms it.

One word as to the interview between Mr. Colman and Phippen Knapp on the turnpike. It is said that Mr. Colman's conduct in this matter is inconsistent with his testimony. There does not appear to me to be any inconsist-

ency. He tells you that his object was to save Joseph, and to hurt no one, and least of all the prisoner at the bar. He had probably told Mr. White the substance of what he heard at the prison. He had probably told him that Frank confirmed what Joseph had confessed. He was unwilling to be the instrument of harm to Frank. He therefore, at the request of Phippen Knapp, wrote a note to Mr. White, requesting him to consider Joseph as authority for the information he had received. He tells you that this is the only thing he has to regret, as it may seem to be an evasion, as he doubts whether it was entirely correct. If it was an evasion, if it was a deviation, if it was an error, it was an error of mercy, an error of kindness—an error that proves he had no hostility to the prisoner at the bar. It does not in the least vary his testimony, or affect its correctness. Gentlemen, I look on the evidence of Mr. Colman as highly important; not as bringing into the cause new facts, but as confirming, in a very satisfactory manner, other evidence. It is incredible that he can be false, and that he is seeking the prisoner's life through false swearing. If he is true, it is incredible that the prisoner can be innocent.

Gentlemen, I have gone through with the evidence in this case, and have endeavored to state it plainly and fairly before you. I think there are conclusions to be drawn from it, the accuracy of which you cannot doubt. I think you cannot doubt that there was a conspiracy formed for the purpose of committing this murder, and who the conspirators were:

That you cannot doubt that the Crowninshields and the Knapps were the parties in this conspiracy.

That you cannot doubt that the prisoner at the bar knew

that the murder was to be done on the nigh of the 6th of April:

That you cannot doubt that the murderers of Captain White were the suspicious persons seen in and about Brown Street on that night:

That you cannot doubt that Richard Crowninshield was the perpetrator of that crime:

That you cannot doubt that the prisoner at the bar was in Brown Street on that night.

If there, then it must be by agreement, to countenance, to aid the perpetrator. And if so, then he is guilty as PRINCIPAL.

Gentlemen, your whole concern should be to do your duty, and leave consequences to take care of themselves. You will receive the law from the court. Your verdict, it is true, may endanger the prisoner's life, but then it is to save other lives. If the prisoner's guilt has been shown and proved beyond all reasonable doubt, you will convict him. If such reasonable doubts of guilt still remain, you will acquit him. You are the judges of the whole case. You owe a duty to the public, as well as to the prisoner at the bar. You cannot presume to be wiser than the law. Your duty is a plain, straightforward one. Doubtless we would all judge him in mercy. Toward him, as an individual, the law inculcates no hostility; but toward him, if proved to be a murderer, the law, and the oaths you have taken, and public justice, demand that you do your duty.

With consciences satisfied with the discharge of duty, no consequences can harm you. There is no evil that we cannot either face or fly from, but the consciousness of duty disregarded. A sense of duty pursues us ever. It is omni-

present, like the Deity. If we take to ourselves the wings of the morning, and dwell in the uttermost parts of the sea, duty performed, or duty violated, is still with us, for our happiness or our misery. If we say the darkness shall cover us, in the darkness as in the light our obligations are yet with us. We cannot escape their power, nor fly from their presence. They are with us in this life, will be with us at its close; and in that scene of inconceivable solemnity, which lies yet further onward, we shall still find ourselves surrounded by the consciousness of duty, to pain us wherever it has been violated, and to console us so far as God may have given us grace to perform it.

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